

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

ALLFIRST BANK,

Plaintiff,

v.

JOHN M. ORTENZIO,

Defendant.

FILED  
HARRISBURG, PA

MARY E. D'ANDREA, CLERK  
CASE NO. 1:01-CV-786

May 1 2002

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT  
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

Defendant, John M. Ortenzio ("Mr. Ortenzio"), by his undersigned counsel, submits this Memorandum of Law in Support of Defendant's Motion pursuant to Fed.R.Civ.P. 56 for an Order granting Defendant's Motion for Summary Judgment and dismissing Plaintiff's Complaint in its entirety. In its Complaint, Plaintiff, Allfirst Bank ("Allfirst"), seeks to hold Mr. Ortenzio personally liable for the corporate obligations of CCI Construction Co., Inc. ("CCI") by bypassing the clear language of the contract between Allfirst and Mr. Ortenzio. However, Allfirst cannot establish any of its claims because it cannot establish that the manner in which CCI paid its contractual obligation was prohibited by the loan documents.

**II. BACKGROUND**

This lawsuit involves the interpretation of the contract between Mr. Ortenzio and Allfirst Bank (the "Suretyship Agreement") and its application to three notes: A line of credit that CCI executed on March 24, 1999, pursuant to which plaintiff provided CCI a long term, unsecured \$4 million line of credit ("the Line of Credit"); a Commercial Loan (equipment) Note dated November 20, 1998, pursuant to which plaintiff extended a \$2 million loan to CCI, secured by

CCI's equipment ("the Equipment Note"); and a Commercial Loan Note dated November 8, 1999, in the amount of \$1.2 million, ("the Short-term Note"), guaranteed by Mr. Ortenzio.<sup>1</sup> See, a true and correct copy of Plaintiff's Complaint, which is attached hereto as Exhibit "A" ("Complaint") at Exhibit "C" thereto. Allfirst contends that Mr. Ortenzio acted unlawfully when CCI repaid the short-term note from funds available from the line of credit.

In essence, CCI maintained a single checking account at Allfirst and all of the aforementioned loans were tied into a cash management facility. See, Deposition of Craig J. Schwartz ("Schwartz Dep.") at 85, 102-103, which is attached hereto as Exhibit "B." More specifically, any checks written on CCI's account at Allfirst increased the balance owed on the line of credit and, conversely, all revenues deposited to CCI's account had the effect of reducing the balance and, thereby, increasing the availability of funds that could be borrowed on the line of credit (Schwartz Dep. at 142). According to the commitment letter, CCI was required to maintain its primary account at Allfirst and was required to deposit all profits and all revenues from cash flow into this account. (Complaint, Exhibit "D"; Schwartz Dep. at 66-67). In addition, CCI's customers wire transferred payments directly to Allfirst to be deposited directly into the checking account. See Deposition of Sherri Phillips ("Phillips Dep.") at 17-18, which is attached hereto as Exhibit "C." When Allfirst loaned CCI the sum of \$1.2 million, pursuant to the short-term note, it decreased the balance owed on the line of credit by \$1.2 million. (Schwartz Dep. at 87-88). It is also undisputed that all payments that CCI made from its checking account, such as payroll, taxes, payments to vendors and re-payments on the \$2 million equipment note were drawn from the line of credit, and thereby had the same effect of increasing the balance on the \$4 million line of credit. (Phillips Dep. at 65-66, 70-71).

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<sup>1</sup> Interpretation of contracts poses a question of law for the court to decide. Charles D. Stein Revocable Trust v. General Felt Indus., Inc., 749 A.2d 978, 980 (2000).

According to the deposition of Craig J. Schwartz, plaintiff's loan officer, who was responsible for the loans to CCI, the \$1.2 million short-term note was provided at the request of CCI, on a short-term basis, when CCI was encountering cash flow difficulties. (Schwartz Dep. at 56). Mr. Schwartz acknowledged in his deposition that there were no restrictions in the short-term note as to the source of funds that could be used to repay the note. (Schwartz Dep. at 62). He acknowledged that the short-term note was temporary and, indeed, had to be repaid no later than March 31, 2000. (Schwartz Dep. at 57, 62). He acknowledged that the plaintiff had initially sought to increase the \$4 million line of credit to a \$5 million line of credit, and had requested that Mr. Ortenzio guarantee the full \$5 million, but agreed to limit the defendant's guaranty to the \$1.2 million short-term note after Mr. Ortenzio refused to guarantee more than that amount. (Schwartz Dep. at 69).

Pursuant to the parties' agreement, the form language in the \$1.2 million short-term note was stricken to make it clear that Mr. Ortenzio's guarantee would extend to the \$1.2 million short-term note only, and not to the \$4 million line of credit or to any other loan facility at Allfirst. (Schwartz Dep. at 79). Mr. Schwartz acknowledged that Allfirst could have asked Mr. Ortenzio to guarantee up to \$1.2 million of any loan facility, i.e., not limit the guaranteed amount to the short-term note only, but failed to do so. (Schwartz Dep. at 193-194).

Mr. Schwartz acknowledged in his deposition that there were no restrictions in the short-term note as to the source of funds that could be used to repay the note. (Schwartz Dep. at 62). He admitted that there was no document that deals with how the loan was to be repaid, nor was there any document that states that the \$1.2 million short-term note could not be repaid by writing a check on CCI's checking account, thereby drawing on the line of credit. (Schwartz Dep. at 144). Mr. Schwartz acknowledged that Allfirst had expected that the short-term note would be paid from cash flow, but admitted that the expectation is not memorialized in any

document. (Schwartz Dep. at 146). Remarkably, Mr. Schwartz acknowledged **that there was absolutely no reason why Allfirst could not have documented an express prohibition so that the \$1.2 million short-term note could not be repaid by drawing down on the \$4 million line of credit.** (Schwartz Dep. at 147).

In connection with Allfirst's allegation in the Complaint at paragraph 17, Mr. Schwartz acknowledged that he was not aware of any facts which supported Allfirst's allegation that the repayment of CCI's \$1.2 million short-term loan was a "conditional payment" and would not be effective until the entire \$4 million line of credit had been repaid and satisfied. (Schwartz Dep. at 157). Mr. Schwartz was not aware of any banking practice, custom or regulation that would act as an impediment to Allfirst stating in any loan document that the \$1.2 million short-term note could not be paid off unless and until the \$4 million line of credit had been paid off first. (Schwartz Dep. at 159).

In connection with Allfirst's fraud count, Mr. Schwartz admitted that Mr. Ortenzio never made any direct representation that the \$1.2 million short-term note would not be paid from the \$4 million line of credit. (Schwartz Dep. at 163). Mr. Schwartz reiterated that there was no document anywhere that prohibited repayment of the \$1.2 short-term note from the \$4 million line of credit. (Schwartz Dep. at 193). He reiterated that there had been no impediment to Allfirst requiring Mr. Ortenzio to sign a document which would have prohibited the use of the line of credit to repay the \$1.2 million short-term note. (Schwartz Dep. at 193). Mr. Schwartz acknowledged that there was no impediment to Allfirst putting in any document that the loan could only be repaid from excess cash flow or excess profits. (Schwartz Dep. at 194-195).

On February 11, 2002, approximately one month prior to the due date, CCI repaid the \$1.2 million short-term note by drawing on the \$4 million line of credit and, thereby, merely reversing the book-entry transaction that was made when Allfirst had lent CCI the \$1.2 million a

few months earlier. At the time, CCI owed only approximately \$1.2 million on the \$4 million line of credit, so that the total amount due after the repayment was approximately \$2.4 million. (Schwartz Dep. at 90-91). In other words, according to Mr. Schwartz, at the time of the repayment of \$1.2 million short-term loan, there was a sufficient cushion under the \$4 million line of credit to repay the short-term note. (Schwartz Dep. at 200-201).<sup>2</sup> Notably, Mr. Schwartz admitted that **in hindsight, it would have been “prudent” for Allfirst to require Mr. Ortenzio to execute a document that would have specifically prohibited the repayment of the \$1.2 million short-term note from the \$4 million line of credit.** (Schwartz Dep. at 211-212).

On February 24, 2000, Allfirst declared a default under both the line of credit and the equipment note, but failed to provide CCI the 30 day notice and opportunity to cure, as required in the \$4 million note. Allfirst immediately seized all of CCI's assets, froze its checking account and dishonored all checks including payroll and taxes. (Schwartz Dep. at 122, 125). CCI's bankruptcy followed thereafter.

### **III. ARGUMENT – MR. ORTENZIO IS ENTITLED TO SUMMARY JUDGMENT**

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). Whether a fact is material will be determined by reference to the "substantive evidentiary standards that apply to the case." Anderson v. Liberty Lobby,

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<sup>2</sup> Allfirst's Complaint seeks to paint defendant as an opportunist who caused CCI to pay off the short-term note in order to avoid personal liability in view of the severity of CCI's financial distress, an assertion that is irrelevant in view of the documentation involved. In any event, it is worth noting that CCI's former Chief Financial Officer, Sheri Phillips, has testified that at the same time that CCI paid off the short-term note, CCI had over \$6.5 million in valid claims against governmental entities (Phillips Dep. at 97) and that CCI had, in fact, assumed and notified Allfirst that the short-term note would be timely re-paid by March, 2000 (Phillips Dep. at 49, 111). Ms. Phillips also testified that she had no recollection of Allfirst ever advising CCI or Mr. Ortenzio that the short-term note could not be repaid from the line of credit (Phillips Dep. at 76).

Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986). Whether a genuine issue of material fact is presented will be determined by asking if "a reasonable jury could return a verdict for the non-moving party." Id.

**A. Allfirst Has Failed to Establish a Claim for Breach of Contract Against Mr. Ortenzio.**

Under Pennsylvania law, in order to prove a breach of contract, a plaintiff must show:

- (1) the existence of a valid and binding contract to which the plaintiff and defendants were parties; (2) the contract's essential terms; (3) that plaintiff complied with the contract's terms; (4) that the defendant breached a duty imposed by the contract; and (5) damages resulting from the breach.

Wausau Underwriter's Ins. Co. v. Shisler, No. CIV.A. 98-5145, 2000 WL 233236 \*5 (E.D. Pa. Feb. 28, 2000) (citing Gundlach v. Reinstein, 924 F. Supp. 684, 688 (E.D. Pa. 1996)).

In this case, the evidence shows that a valid and binding contract existed between Allfirst and Mr. Ortenzio, i.e., the suretyship agreement pursuant to which Mr. Ortenzio guaranteed CCI's obligation under the short-term note, and that the terms of the short-term note did not prohibit repaying the short-term note from the line of credit. (Complaint, ¶¶25-30; Schwartz Dep. at 62, 144, 147). Because the short-term note was paid in a manner consistent with its terms, Mr. Ortenzio cannot be liable for breach of that agreement. Further, since Allfirst cannot establish breach, it cannot establish that damages resulted.

Allfirst is unable to establish that Mr. Ortenzio breached the short-term note for the following reasons:

**1. The Bank Documents Did Not Preclude CCI from Paying the \$1.2 Million Note By Using the Available Line of Credit.**

According to Mr. Schwartz, Allfirst's loan officer, there were no restrictions in the short-term note as to the source of funds that could be used to repay the note. (Schwartz Dep. at 62; Complaint, Exhibit "C"). While nothing prohibited Allfirst from negotiating a provision

restricting the source of funds, it failed to do so. (Schwartz Dep. at 193-195). The court cannot enforce a provision to an agreement that does not exist. See, Glen-Gery Corp. v. Wargel Constr. Co., 734 A.2d 926, 929 (Pa. Super. 1999) (stating that reviewing court may not rewrite the terms of a contract nor give them a meaning that conflicts with the language used).

**2. The Bank Documents Did Not Specify How the \$1.2 Million Note was to be Repaid.**

Mr. Schwartz further admitted that there were no documents dealing with how the loan was to be repaid, nor was there any document stating that the \$1.2 million short-term note could not be repaid by writing a check on CCI's only checking account, thereby drawing on the line of credit. (Schwartz Dep. at 144). In addition, Mr. Schwartz acknowledged that Allfirst had expected that the short-term note would be paid from cash flow, but admitted that the expectation is not memorialized in any document. (Schwartz Dep. at 46). Allfirst's failure to have its "expectation" integrated into the contract prevents it from establishing breach of contract. Because a fully integrated agreement was entered into by the parties, this court cannot enforce Allfirst's "expectations," which were not made part of the document. See, Anchel v. Shea, 762 A.2d 346, 352 (Pa. Super. 2000) (stating that when court is interpreting intention of parties to a contract, court must give effect to clear and unambiguous terms without reference to matters outside the contract).

**3. The Only Way the \$1.2 Million Note Could Be Repaid Was by Using the Cash Management Facility Thereby Drawing on the Line of Credit.**

As Allfirst was well aware, CCI maintained a single checking account at Allfirst and all of CCI's loans (the line of credit, the equipment note and the short-term note) were tied into a cash management facility. (Schwartz Dep. at 85, 102-103). Furthermore, CCI was required to deposit all collected receivables into this account. (Complaint, Exhibit "D"; Phillips Dep. at 17-18). Thus, CCI had no other account from which it could pay the \$1.2 million short-term note.

In fact, the bank's documents required CCI to maintain its primary account at Allfirst. (Schwartz Dep. at 66-67; Complaint at Exhibit "D").

**4. The \$1.2 Million Short-term Note Was Repaid in the Same Manner as the Other Loans CCI had With Allfirst.**

As Mr. Schwartz and Ms. Phillips, CCI's former controller testified, all payments that CCI made came from CCI's Allfirst Bank checking account that was tied to the cash management facility.<sup>3</sup> These payments included not only payroll, taxes and payments to vendors, but also repayments on the equipment note. (Schwartz Dep. at 84-85; Phillips Dep. at 65-66, 70-71). Further, Allfirst accepted equipment note payments consistently and without question. However, despite accepting principal and interest equipment note payments written on the CCI checking account, Allfirst is now claiming that CCI's payment of the \$1.2 million short-term note from the exact same account is improper and constitutes breach of contract by CCI.<sup>4</sup>

**5. The Repayment of the \$1.2 Million Note Was Merely a Reversal of the Initial Transaction.**

When Allfirst loaned CCI the \$1.2 million, pursuant to the short-term note, it deposited the funds into the cash management facility. This deposit had the effect of increasing the availability on the line of credit by \$1.2 million and conversely, decreasing the balance owed on the line of credit by \$1.2 million. (Schwartz Dep. at 87-88). Therefore, when CCI repaid the

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<sup>3</sup> In an attempt to bypass Allfirst's total failure to include any prohibition of repayment of the short-term note from the line of credit in any of the loan documents, Allfirst contends such repayment was prohibited since the purpose of the loan, per the commitment, required CCI to use the loan proceeds to finance accounts receivable and work in progress. This contention overlooks that 1) the provision deals with CCI's use of funds in operating its business and not repayment of the short-term note; 2) Allfirst was aware at all relevant times that CCI was drawing on the line of credit to make payments to the IRS and monthly principal and interest payments on the equipment note; and 3) CCI had to repay the short-term note from the checking account as it was CCI's only account.

<sup>4</sup> There is no evidence that CCI violated the terms of any of its agreements with Allfirst when it repaid the \$1.2 million short-term note. However, even if CCI somehow acted improperly, that fact does not advance Allfirst's efforts to hold Mr. Ortenzio personally liable here.

\$1.2 million short-term note by writing a check on its Allfirst account, this initial transaction was merely reversed. (Schwartz Dep. at 160-161).

Based upon the foregoing evidence, Allfirst cannot establish that the \$1.2 million short-term note was breached. Rather, the evidence shows that neither CCI nor Mr. Ortenzio did anything that was prohibited by the loan documents.

#### **B. Allfirst Has Failed To Establish That Mr. Ortenzio Was Unjustly Enriched**

##### **1. The Quasi Contract Remedy of Unjust Enrichment Does Not Apply When the Parties' Relationship is Defined by a Contract.**

In Count II of Allfirst's complaint, Allfirst claims that "[b]ecause CCI and Ortenzio used the proceeds of the revolving line of credit of CCI with Allfirst to repay the One Million Two Hundred Thousand Dollar loan without Allfirst's knowledge or consent and because Ortenzio was unjustly enriched thereby" Allfirst is entitled to the equitable remedy of equitable subrogation. (Complaint, ¶32). However, Count I of Allfirst's complaint alleges that numerous contracts existed between the bank and Mr. Ortenzio, which Mr. Ortenzio allegedly breached. (Complaint, ¶¶25-30). In other words, Allfirst has sued Mr. Ortenzio on both a breach of contract theory **and** a theory of equitable subrogation/quantum meruit, which is not proper.

Quantum meruit is "a quasi-contractual remedy in which a contract is implied-in-law under a theory of unjust enrichment; the contract is one that is implied in law, and 'not an actual contract at all.'" Hershey Foods Corp. v. Ralph Chapek, Inc., 828 F.2d 989, 998-99 (3<sup>rd</sup> Cir. 1987) (citing Ragnar Benson, Inc. v. Bethel Mart Assoc., 308 Pa. Super. 405, 414, 454 A.2d 599, 603 (1982)). However, it is well settled under Pennsylvania law, that a claim for the quasi-contractual doctrine of unjust enrichment will not lie when the relationship between the parties is based upon a written agreement or express contract. Hershey Foods, 828 F.2d at 999 (citing Benefit Trust Life Ins. Co. v. Union Nat. Bank, 776 F.2d 1174 (3<sup>rd</sup> Cir. 1985). See also,

Halstead v. Motorcycle Safety Foundation, Inc., 71 F. Supp.2d 455 (E.D. Pa. 1999) (the finding of a valid contract prevents a party from recovering for unjust enrichment); Mitchell v. Moore, 729 A.2d 1200, 1203 (Pa. Super. 1999)(a court may not make a finding of unjust enrichment where a written or express contract exists); Birchwood Lakes Communitiy Ass'n v. Com., 296 Pa. Super. 77, 442 A.2d 304, 308 (1982) (plaintiff cannot recover on a claim for unjust enrichment if such claim is based on breach of a written contract).

Here, Allfirst relies upon the contractual relationship between the bank and Mr. Ortenzio pursuant to the suretyship agreement as the basis for its breach of contract claim. (Complaint, Count I). In fact, it is undisputed that a contractual relationship existed between Allfirst and Mr. Ortenzio. This contract, the suretyship agreement, is attached to plaintiff's complaint. (Complaint, Exhibit B). Accordingly, summary judgment should be entered in favor of Mr. Ortenzio, as the cause of action for quantum meruit may not lie in light of the fact that it is undisputed that the parties' relationship is governed by a written contract.

#### **C. Allfirst Has Failed To Establish A Cause Of Action For Equitable Subrogation.**

##### **1. There is No Equitable Reason to Grant Subrogation to Allfirst Because Allfirst Had the Ability to Negotiate for the Rights it Now Seeks to Acquire by Subrogation and Failed To Do So.**

Pennsylvania recognizes the doctrine of equitable subrogation, which is defined as "the substitution of one entity in the place of another with reference to a lawful claim, demand, or right so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies or securities." Public Serv. Mut. Ins. Co. v. Kidder-Friedman, 743 A.2d 485, 488 (Pa. Super. 1999) (quoting Molitoris v. Woods, 422 Pa. Super. 1, 9, 618 A.2d 985, 989 (1992)). In order to successfully establish a claim for equitable subrogation, the plaintiff must show: "(1) the claimant paid the creditor to protect its own interests; (2) the claimant did

not act as a volunteer; (3) the claimant was not primarily liable for the debt; and (4) allowing subrogation will not cause injustice to the rights of others.” Tudor Dev. Group, Inc. v. United States Fidelity & Guar. Co., 968 F.2d 357, 362 (3<sup>rd</sup> Cir. 1992) (citing United States Fidelity & Guar. Co. v. United Penn Bank, 362 Pa. Super. 440, 524 A.2d 958 (1987).

However, as the court pointed out in Tudor Dev. Group, equitable subrogation is not an appropriate remedy when the party was in a position to negotiate for the rights it seeks through subrogation but failed to do so. Id. at 363 (citing In re Carley Capital Group, 119 B.R. 646, 650 (W.D. Wis. 1990); In re Muzenrieder Corp., 58 B.R. 228, 231 (Bankr. M.D. Fla. 1986)). In Tudor Dev. Group, plaintiff-bank issued a letter of credit in favor of the township for the benefit of a real estate developer. Id. at 358. According to the terms of the letter of credit, the developer agreed to reimburse the bank if the bank honored the letter of credit. Id. at 359. As security, the bank received a collateral note from the developer’s general partner in the project and an assignment of the proceeds from certain performance bonds. Id. Upon the township’s demand, the bank paid the township in accordance with the letter of credit but was never reimbursed by the developer. Id.

In addition to finding that the bank failed to meet the technical requirements of equitable subrogation, the court held that because the bank was in a position to bargain for whatever security it thought appropriate when agreeing to issue the letter of credit, equitable subrogation would not be granted. Id. at 363. Accordingly, the court stated:

[N]ow that [the bank] has discovered that it made a poor business decision in not contracting for an assignment of rights in [certain performance bonds], it seeks our help in gaining additional rights. As the district court properly concluded, **there is no apparent reason why the court should exercise its equitable powers to rewrite the contract between the parties to give [the bank] more security than it bargained to receive.”** Id. (emphasis added).

In its complaint, Allfirst, as creditor under the line of credit, seeks to be equitably subrogated to the rights of Allfirst, as creditor under the \$1.2 million short-term note, so that it can hold Mr. Ortenzio personally liable for the balance due under the line of credit. (Complaint, ¶32). Allfirst's theory is based upon its claim that the balance on the line of credit had to be reduced to zero before CCI could use the line of credit to pay the \$1.2 million short-term note. (Complaint, ¶17). According to Allfirst, because CCI used the line of credit to repay the short-term note before the balance reached zero, Allfirst under the line of credit is entitled to all of the remedies available to Allfirst under the suretyship agreement.

Yet, Mr. Schwartz acknowledged in his deposition that there were no restrictions in the short-term note as to the source of funds that could be used to repay the note. (Schwartz Dep. at 62). Mr. Schwartz also admitted that there was no document stating that the \$1.2 million short-term note could not be repaid by writing a check on CCI's checking account, thereby drawing on the line of credit. (Schwartz Dep. at 144). Further, Mr. Schwartz stated that while Allfirst expected that the short-term note would be paid from cash flow, there was no document memorializing that expectation. (Schwartz Dep. at 146). Most importantly, Mr. Schwartz admitted that there was absolutely no reason why Allfirst could not have documented an express prohibition against CCI using the line of credit to repay the short-term note. (Schwartz Dep. at 147). Because Allfirst, by its own admission, did not negotiate for and obtain the rights it now seeks through equitable subrogation, the doctrine is inapplicable. Consequently summary judgment should be entered in favor of Mr. Ortenzio on Count II of Allfirst's complaint.

**2. Allfirst is Not Entitled to an Equitable Remedy Because an Adequate Remedy Exists At Law.**

In Pennsylvania, equitable relief is not permissible when a party has an adequate legal or statutory remedy. Tudor Dev. Group, 968 F.2d at 364 (citing Clark v. Pennsylvania State Police,

496 Pa. 310, 436 A.2d 1383, 1385 (1981). See also, Redmond Finishing Co., Inc. v. Ginsburg, 301 Pa. Super. 51, 446 A.2d 1330 (dismissing action in equity because plaintiff had earlier elected to proceed at law for monetary damages). “In determining whether a remedy is ‘adequate,’ [the court] must look to its availability and not to the likelihood of success.” Tudor Dev. Group, 968 F.2d at 364.<sup>5</sup>

Here, Allfirst has the option of proceeding with its breach of contract claim against Mr. Ortenzio or it can file a claim against CCI in the bankruptcy proceedings, both of which are available legal remedies. Regardless of whether Allfirst will be made whole under either of these adequate and available options, Allfirst is not entitled to the equitable remedy of subrogation. Thus, Mr. Ortenzio is entitled to summary judgment on Count II of Allfirst’s complaint.

#### **D. Allfirst Has Failed To Establish A Cause Of Action For Fraud.**

In Count III of its complaint, Allfirst purports to state a claim for fraud and seeks money damages. (Complaint, ¶34). In order to prove fraud, Pennsylvania law requires that the plaintiff establish the following elements: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance. See, Lind v. Jones, Lang LaSalle Americas, Inc., 135 F. Supp.2d 616, 620 (E.D. Pa. 2001) (citing Gibbs v. Ernst, 538 Pa. 193, 207, 647 A.2d 882, 889 (1994); Gruenwald v. Advanced Computer

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<sup>5</sup> In Tudor Dev. Group, the court found that the bank had two legal remedies (seeking judgment against the developer’s general partner under the promissory note or suing the developer under the reimbursement agreement) and one statutory remedy available. Id. Therefore, the court concluded that “the fact that the remedies set forth above might not make [the bank] whole does not mandate a finding that such remedies are inadequate, thereby requiring this court to grant equitable relief.” Id.

Applications, 730 A.2d 1004, 1014 (Pa. Super. 1999)). Additionally, these elements must be proven by clear and convincing evidence, not the lesser preponderance of the evidence standard. Lind, 135 F. Supp.2d at 621. "Pennsylvania law requires that the trial judge to decide as a matter of law before he submits a case to the jury whether plaintiffs' evidence attempting to prove fraud is sufficiently clear, precise, and convincing to make out a *prima facie* case." Id. (citing Northeastern Power Co. v. Balcke-Durr, Inc., 49 F. Supp.2d 783 (1999)).

**1. Allfirst Cannot Establish that Mr. Ortenzio Made a False Statement Upon Which it Relied.**

Here, Allfirst cannot establish, by clear and convincing evidence, that Mr. Ortenzio made a false statement upon which Allfirst relied. In its complaint, Allfirst alleges that Mr. Ortenzio's delivery of the check written drawn upon CCI's line of credit with Allfirst was a representation that the payment of the \$1.2 short-term note was being made with funds other than those borrowed under the revolving line of credit. (Complaint, ¶34). However, in his deposition, Mr. Schwartz admitted that Mr. Ortenzio never made any direct representation that the \$1.2 million short-term loan would not be paid from the \$4 million line of credit and also testified that he did not investigate the source of the funds because he did not care. (Schwartz Dep. at 163). Mr. Schwartz further admitted that there was no loan document **anywhere** that prohibited repayment of the \$1.2 million short-term note from the line of credit. (Schwartz Dep. at 193). He also reiterated that there had been no impediment to the bank requiring that Mr. Ortenzio sign a document which would have prohibited use of the line of credit to repay the \$1.2 million short-term note. (Schwartz Dep. at 193). Finally, none of the loan documents require that Mr. Ortenzio make any representation to Allfirst regarding the source of the funds prior to repayment of the short-term note. Accordingly, Allfirst has failed to establish that Mr. Ortenzio made a

false statement upon which it relied and therefore, summary judgment should be entered in favor of Mr. Ortenzio on Count III.

**2. Allfirst Cannot Establish that Mr. Ortenzio Intended to Deceive Allfirst.**

Even if Allfirst were able to establish that Mr. Ortenzio made a false statement, it cannot establish, by clear and convincing evidence that Mr. Ortenzio intended to deceive Allfirst. As Allfirst admits in its Complaint, the payment of the \$1.2 million short-term note was a check written on CCI's line of credit with Allfirst. (Complaint, ¶34). Thus, because Mr. Ortenzio personally presented **an Allfirst check**, bearing the account number of CCI's line of credit with Allfirst, to Allfirst when repaying the short-term note, Allfirst cannot establish that Mr. Ortenzio failed to deceive Allfirst. Mr. Ortenzio made no attempt to hide the source of the funds. His failure to explicitly state the source of the funds, when none of the loan documents required any such representation, does not establish an intent to deceive.

**IV. CONCLUSION**

Based upon the forgoing reasons, Defendant, John M. Ortenzio, respectfully requests that this Honorable Court enter summary judgment in his favor.

Respectfully submitted,

BLANK ROME COMISKY & McCUALEY LLP

Dated: 4/30/02

BY:



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(215) 569-5500  
*Attorneys for Defendant, John M. Ortenzio*

**CERTIFICATE OF SERVICE**

Edward I. Swichar, attorney for Defendant, John Ortenzio, hereby certifies that he caused a true and correct copy of Defendant's Memorandum of Law in Support of his Motion for Summary Judgment to be served upon the following on this <sup>30</sup>~~29~~th day of April, 2002, by first-class mail, postage prepaid:

Lawrence Gebhardt, Esquire  
Gebhardt & Smith, LLP  
The World Trade Center, Ninth Floor  
Baltimore, MD 21020-3064

  
EDWARD I. SWICHAR

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

COPY

ALLFIRST BANK  
25 S. Charles Street  
Baltimore, MD 21201

\*  
Plaintiff,

v.  
\*

\* CASE NO.:  
\*

JOHN M. ORTENZIO  
510 Orchard Drive  
Lemoyne, PA

\*  
Defendant.

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COMPLAINT

Plaintiff, Allfirst Bank ("Allfirst"), by its undersigned attorneys, sues Defendant, John M. Ortenzio ("Ortenzio"), and states as follows:

1. Allfirst is a banking institution chartered under the laws of the State of Maryland, with its principal place of business in Baltimore, Maryland. For this reason, Allfirst is a citizen of the State of Maryland.
2. Ortenzio is a citizen of the Commonwealth of Pennsylvania.
3. The matter in controversy in this case exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interests and costs.
4. Subject matter jurisdiction exists in this case on the basis of diversity of citizenship and amount in controversy pursuant to 28 U.S.C. Section 1332.
5. Ortenzio is the sole shareholder and president of CCI Construction Co., Inc. ("CCI"), a construction company with its principal office in the Commonwealth of Pennsylvania.
6. On or about March 24, 1999, Allfirst reestablished for the benefit of CCI a Four

Million Dollar unsecured revolving line of credit and cash management facility pursuant to a Film Cash Solutions Promissory Note ("Film Note"). A true and accurate copy of the Film Note is attached hereto as Exhibit A.

7. Pursuant to the revolving line of credit and cash management facility established in connection with the Film Note, CCI could borrow sums under the revolving line of credit by the issuance of checks drawn on its account with Allfirst up to the sum of Four Million Dollars. All collections made by CCI from customers were deposited, either directly by customers or by CCI upon receipt from customers, into CCI's account with Allfirst. Such deposits were applied on at least a daily basis to reduce the outstanding balance advanced under the revolving line of credit or, to the extent no amounts were outstanding under the revolving line of credit, into an interest bearing account, whose interest accrued to the benefit of CCI.

8. Ortenzio did not guaranty the revolving line of credit and had no obligation to Allfirst with respect to the repayment of the revolving line of credit. The sole obligor under the revolving line of credit was CCI.

9. In November of 1999, CCI experienced financial difficulties with respect to the cash flow generated by its business in the sense that its anticipated cash receipts were expected to be substantially less than its anticipated cash expenditures. To address the problem of CCI's expected cash flow shortfall, Ortenzio requested an additional extension of credit in the amount of One Million Two Hundred Thousand Dollars from Allfirst to or for the benefit of CCI.

10. Allfirst was unwilling to extend additional credit to CCI on the basis of its credit alone. Allfirst agreed to extend additional credit to CCI in the requested amount of One Million Two Hundred Thousand Dollars, but only upon the condition that Ortenzio guaranty and become a surety

and co-obligor with CCI on the additional One Million Two Hundred Thousand Dollars of indebtedness. To induce Allfirst to extend the additional One Million Two Hundred Thousand Dollars of credit to CCI, Ortenzio agreed to guaranty and become a surety and co-obligor on the additional One Million Two Hundred Thousand Dollars to be extended by Allfirst to CCI.

11. On November 8, 1999, CCI executed a Commercial Loan Note ("Commercial Note") in the face amount of One Million Two Hundred Thousand Dollars, payable on demand, and Allfirst advanced to CCI the principal amount of the Commercial Note. Exhibit B is a true and accurate copy of the Commercial Note executed by CCI on November 8, 1999.

12. Also on November 8, 1999, Ortenzio executed a Suretyship Agreement in which he guaranteed and became a surety for and a co-obligor with CCI with respect to the One Million Two Hundred Thousand Dollar loan extended by Allfirst to CCI., including all principal, interest, and attorneys fees and collection expenses with respect to collecting the sums due on the Commercial Note. In addition, Ortenzio agreed to pay all attorneys fees and costs of collection incurred by Allfirst in connection with enforcing the Suretyship Agreement and obtaining from Ortenzio the sums due thereon. A true and accurate copy of the Suretyship Agreement is attached hereto as Exhibit C.

13. Despite the advance of One Million Two Hundred Thousand Dollars by Allfirst to CCI pursuant to the Commercial Note, CCI's cash flow problems continued to exist and to worsen significantly.

14. On or about February 12, 2000, Ortenzio drew a check upon the account of CCI with Allfirst established in connection with the revolving line of credit in an amount sufficient to repay all sums then due and owing on the Commercial Note and delivered the aforementioned check to a teller of Allfirst with the instruction that the check was being delivered to Allfirst for the purpose of

satisfying in full all sums owed by CCI under the Commercial Note. In accordance with Ortenzio's instructions, the teller accepted the check and provided Ortenzio with a receipt therefore.

15. At the time Ortenzio drew the check on the account of CCI and delivered the check to Allfirst to repay the sums owed on the Commercial Note, CCI had an outstanding balance under its revolving line of credit. Payment of this check, drawn on the account of CCI established in connection with the revolving line of credit, required an advance under the revolving line of credit. Through this procedure, Ortenzio caused CCI to repay Allfirst on a loan which he had guarantied with money borrowed from Allfirst under a revolving line of credit which he had not guarantied.

16. In accepting the check presented by Ortenzio in payment of the One Million Two Hundred Thousand Dollar loan and in processing and paying the check drawn on the account of CCI, Allfirst was unaware that the payment being made by Ortenzio of the One Million Two Hundred Thousand Dollar loan was simply a further borrowing under the revolving line of credit.

17. The repayment of CCI's loan by Ortenzio was a conditional payment and was not effective unless and until such time as the outstanding balance and all advances under the revolving line of credit had been repaid and satisfied.

18. Ortenzio delivered the CCI check representing a draw upon the revolving line of credit to Allfirst in payment of the One Million Two Hundred Thousand Dollar loan for the express and sole purpose of ostensibly discharging his guaranty of the One Million Two Hundred Thousand Dollar loan and to avoid the obligations which he undertook in executing the Suretyship Agreement.

19. On or about February 18, 2000, Ortenzio met with representatives of Allfirst and provided them with detailed information relating to CCI's continuing cash flow shortages. This information indicated that CCI anticipated severe and substantial cash flow shortages over the

succeeding months, approximating \$3.8 million in February and reaching almost \$6 million by June, and that its business was in danger of failing.

20. As a result of the information provided by Ortenzio at the meeting on February 18, 2000, Allfirst on or about February 24, 2000 declared a default under an equipment loan extended to CCI on the basis of a material adverse change in CCI's financial condition and, as a result of the default under the equipment note, also declared a default under the Film Note. Allfirst notified CCI that no further advances would be made on the revolving line of credit and that Allfirst was demanding immediate repayment of all sums due and owing from CCI. Exhibit D attached hereto is a true and accurate copy of the default letter issued by Allfirst to CCI.

21. Between the date of Ortenzio's meeting with representatives of Allfirst on February 18, 2000 and the declaration of default on February 24, 2000, Allfirst realized that Ortenzio had caused CCI to repay the One Million Two Hundred Thousand Dollar loan with a borrowing under the revolving line of credit for the purpose of attempting to effect a discharge of his personal liability to Allfirst under the Suretyship Agreement.

22. Pursuant to the cash management facility established under the Film Note, collections from CCI customers were received by Allfirst on February 22, 24, and 25, 2000, aggregating the sum of \$2,317,291.28, which amount was applied by Allfirst to reduce the outstanding balance under the revolving line of credit.

23. On May 19, 2000, CCI filed for relief under Chapter 11 of the United States *Bankruptcy Code*. At the time of the filing of the petition under Chapter 11, the outstanding balance under the revolving line of credit owed by CCI to Allfirst for principal and interest, but exclusive of the costs and expenses of collection, was the sum of \$300,373.16. Allfirst has incurred costs and

expenses, including attorneys fees, in connection with the CCI bankruptcy case and will continue to incur such costs and expenses until the bankruptcy case has concluded.

24. On or about January 10, 2001, CCI, as debtor and debtor-in-possession, instituted an adversary proceeding in the United States Bankruptcy Court for the Middle District of Pennsylvania in a case entitled *CCI Construction Co., Inc. v. Allfirst Bank* (Adversary No. 1-01-00011A) in which CCI seeks to recover either as preferential or as an improper setoff the \$2,317,291.28 dollars in payments received by Allfirst on February 22, 24, and 25, 2000. Allfirst is contesting the claims of CCI in the bankruptcy case and has denied that the receipt of the payments were either a preference or an improper setoff. Allfirst has incurred litigation costs and expenses in connection with the defense of this preference action and will continue to incur litigation costs and expenses until the preference action has concluded.

COUNT I

25. Allfirst incorporates by reference the matters and facts alleged in paragraphs 1 through 24.

26. The purported payment by Ortenzio on behalf of CCI on or about February 12, 2000, was a conditional payment and did not have the effect of repaying the Commercial Note or discharging the One Million Two Hundred Thousand Dollar obligation of CCI to Allfirst except to the extent that Allfirst received non-avoidable repayments on the revolving line of credit in an amount sufficient to discharge in full the entire revolving line of credit and all sums due under the Film Note, including attorneys fees and collection expenses.

27. The revolving line of credit was never discharged in full and presently has an outstanding balance of \$326,655.72 with respect to principal and to interest accrued to May 1, 2001.

In addition, Allfirst has incurred attorneys fees and collection costs with respect to collection of the revolving line of credit and defense of the preference action in the bankruptcy case.

28. Because the revolving line of credit has never been satisfied and discharged in full, the One Million Two Hundred Thousand Dollar loan evidenced by the Commercial Note was never repaid in full and remains an obligation of CCI.

29. Because the One Million Two Hundred Thousand Dollar loan from Allfirst to CCI was never paid or discharged in full, the obligation of Ortenzio, as guarantor and surety and co-obligor with respect to the One Million Two Hundred Thousand Dollar loan and the Commercial Note, was never discharged or satisfied, such that Ortenzio remains liable under the Suretyship Agreement for all sums owed by CCI pursuant to the One Million Two Hundred Thousand Dollar loan and the Commercial Note.

30. The amount owed by Ortenzio pursuant to the Suretyship Agreement equals the lesser of (a) the unpaid balance of all principal and interest owed on the Commercial Note as though the February 12, 2000 payment had not been made or (b) the greater of (i) the unpaid principal balance and all accrued interest due under the revolving line of credit, together with all collection costs and attorneys fees, or (b) the unpaid principal balance and all accrued interest due under the revolving line of credit, together with all collection costs and attorneys fees, plus the amount of any recovery made by CCI in the preference action pending in the bankruptcy case, together with, in either case (a) or (b), all attorneys fees and collection costs in enforcing the Suretyship Agreement as provided therein.

COUNT II

31. Allfirst incorporates by reference the matters and facts alleged in paragraphs 1 through

24.

32. Because CCI and Ortenzio used the proceeds of the revolving line of credit of CCI with Allfirst to repay the One Million Two Hundred Thousand Dollar loan without Allfirst's knowledge or consent and because Ortenzio was unjustly enriched thereby, Allfirst, as creditor under the revolving line of credit, is equitably subrogated to the rights of Allfirst, as creditor under the One Million Two Hundred Thousand Dollar loan, including through such equitable subrogation the right to enforce and collect upon the Suretyship Agreement executed by Ortenzio.

33. The amount to which Allfirst is entitled to be equitably subrogated in the enforcement of the Suretyship Agreement against Ortenzio equals the lesser of (a) the unpaid balance of all principal and interest owed on the Commercial Note as though the February 12, 2000 payment had not been made or (b) the greater of (i) the unpaid principal balance and all accrued interest due under the revolving line of credit, together with all collection costs and attorneys fees, or (b) the unpaid principal balance and all accrued interest due under the revolving line of credit, together with all collection costs and attorneys fees, plus the amount of any recovery made by CCI in the preference action pending in the bankruptcy case, , together with, in either case (a) or (b), all attorneys fees and collection costs in enforcing the Suretyship Agreement as provided therein.

### COUNT III

34. The payment by Ortenzio of the One Million Two Hundred Thousand Dollar loan extended by Allfirst to CCI through the use of a check drawn upon and reflecting an advance on CCI's revolving line of credit with Allfirst constituted common law fraud by Ortenzio in that (a) delivery of the check amounted to and was the equivalent of a representation by Ortenzio that payment of the One Million Two Hundred Thousand Dollar loan was being made by CCI or by

Ortenzio through CCI with monies other than those borrowed under the revolving line of credit. This representation by Ortenzio was knowingly false when made and was justifiably relied upon by Allfirst in giving Ortenzio and CCI a receipt for the payment and noting on its record that the obligations under the Commercial Note and Suretyship Agreement had been satisfied. Allfirst has suffered damages as a direct and proximate result of the knowingly false representation made by Ortenzio upon which it justifiably relied in an amount equal to the lesser of (a) the unpaid balance of all principal and interest owed on the Commercial Note as though the February 12, 2000 payment had not been made or (b) the greater of (i) the unpaid principal balance and all accrued interest due under the revolving line of credit, together with all collection costs and attorneys fees, or (b) the unpaid principal balance and all accrued interest due under the revolving line of credit, together with all collection costs and attorneys fees, plus the amount of any recovery made by CCI in the preference action pending in the bankruptcy case, , together with, in either case (a) or (b), all attorneys fees and collection costs in enforcing the Suretyship Agreement as provided therein.

WHEREFORE, Allfirst requests judgment:

1. As to Counts One, Two and Three for compensatory damages against Ortenzio in an amount equal to the lesser of (a) the unpaid balance of all principal and interest owed on the Commercial Note as though the February 12, 2000 payment had not been made or (b) the greater of (i) the unpaid principal balance and all accrued interest due under the revolving line of credit, together with all collection costs and attorneys fees, or (b) the unpaid principal balance and all accrued interest due under the revolving line of credit, together with all collection costs and attorneys fees, plus the amount of any recovery made by CCI in the preference action pending in the bankruptcy case, , together with, in either case (a) or (b), all attorneys fees and collection costs in enforcing the

Suretyship Agreement as provided therein;

2. As to Count Three, punitive damages in an amount equal to One Million Two Hundred Thousand Dollars or such other amount as is appropriate under the circumstances; and
3. As to Counts One, Two, and Three, an award of costs.

Michael D. Nord

Lawrence J. Gebhardt  
(Motion for *Pro Hac Vice* Admission Pending)  
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Attorneys for Allfirst Bank

# EXHIBIT A

**EXHIBIT**

Cirtenzio-3  
2/13/01 TKB

\* a division of  
FMB Bank

FILM/CASH SOLUTIONS PROMISSORY NOTE  
(PENNSYLVANIA)

Instructions to Loan Officer: Use for (a) loans to corporations, regardless of amount, and (b) loans to non-corporate borrowers when the only purpose of any such loan is business and the principal amount of such loan exceeds \$50,000.

\$ 4,000,000.00

Mechanicsburg, PA  
(City) (State)

March 24, 1999

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay on demand to the order of THE FIRST NATIONAL BANK OF MARYLAND\*, [REDACTED] ("Bank"), at any of Bank's offices, or at such other place as the holder of this Promissory Note may from time to time designate, the principal sum of FOUR MILLION and 00 /100 Dollars (\$ 4,000,000.00), or such other amount as may be advanced from time to time to Borrower, together with interest thereon at the rate or rates hereafter specified and any and all other sums which may be owing to Bank by Borrower pursuant to this Promissory Note. The following terms, as well as the applicable terms on Exhibit A, attached hereto and incorporated herein by reference, shall apply to this Promissory Note.

1. **DEFINITIONS.** The following terms have the following definitions:
  - A. "Account" means the commercial checking account maintained by Borrower with Bank and designated as Account No. 28864514, together with any replacement account therefor.
  - B. "Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in the Commonwealth of Pennsylvania are authorized to close.
  - C. "Incremental Advance Amount" means the amount indicated on Exhibit A as the Incremental Advance Amount. Each Loan must be an integral multiple of such amount.
  - D. "Initial Excess Balance" means, for any Business Day, the amount by which the collected balance in the Account at the end of such Business Day after posting all credits to the Account (subject to funds availability), but prior to posting any debits to the Account, exceeds the Target Balance.
  - E. "Line Availability" means, for any Business Day, an amount equal to the difference obtained by subtracting the aggregate principal balance outstanding under all Loans from the Maximum Line Amount.
  - F. "Loan" means an advance of monies from Bank to Borrower pursuant to the terms of this Promissory Note; and the term "Loans" means more than one Loan.
  - G. "Maximum Advance Amount" means an amount equal to the highest integral multiple of the Incremental Advance Amount which does not exceed the Line Availability.
  - H. "Maximum Line Amount" means the amount indicated on Exhibit A as the Maximum Line Amount, which amount is the maximum aggregate principal balance of the Loans which may be outstanding at any one time.
  - I. "Minimum Loan Advance" means the amount indicated on Exhibit A as the Minimum Loan Advance, which amount is the minimum principal amount of each Loan.
  - J. "Presented items" means, for any Business Day, the aggregate amount of debits which have been presented for payment against the Account.
  - K. "Prime Rate" means a fluctuating annual rate of interest equal to the greater of: (i) that rate announced from time to time by Bank as its "prime rate;" or (ii) the rate obtained by adding one percent (1%) to the average rate, rounded to the nearest one-tenth of one percent, for three month maturity dealer placed commercial paper for the week most recently reported in the Federal Reserve Statistical Release No. H.15(519) entitled "Selected Interest Rates" or any succeeding publication.
  - L. "Target Balance" means the amount indicated on Exhibit A as the Target Balance, which amount is the minimum collected balance that must be maintained in the Account.
2. **PROCEDURES FOR LOANS.** All Loans shall be made in the form of a transfer of funds into the Account in accordance with the procedures set forth in this paragraph. Borrower hereby irrevocably authorizes Bank to make Loans in accordance with the procedures set forth herein. At the end of each Business Day, Bank shall calculate the Initial Excess Balance and the aggregate amount of the Presented Items. In the event the Initial Excess Balance is less than the aggregate amount of the Presented Items, Bank shall make a Loan by transferring funds into the Account in an amount equal to the amount, which when added to the Initial Excess Balance, would be equal to the aggregate amount of the Presented Items; provided, however, that: (a) the principal amount of the Loan shall not be less than the Minimum Loan Advance; (b) the principal amount of the Loan must be an integral multiple of the Incremental Advance Amount, and therefore, if it would not otherwise be an integral multiple of the Incremental Advance Amount, the amount of the Loan will be rounded up to the next higher integral multiple of the Incremental Advance Amount unless there is insufficient Line Availability in which case the Loan amount will be the Maximum Advance Amount; and (c) the principal amount of the Loan shall not exceed the Maximum Advance Amount. If at any time the amount of the Initial Excess Balance is less than the amount of the Presented Items by an amount greater than the Maximum Advance Amount, Bank shall: (i) make a Loan by transferring funds into the Account in an amount equal to the Maximum Advance Amount; and (ii) determine, in its sole discretion, which Presented Items will be paid, and which Presented Items will not be paid. In the event the Initial Excess Balance is greater than the amount of the Presented Items, Bank shall post and pay all of the Presented Items. If, following Bank's posting and paying of all of the Presented Items, there remains a balance in the Account in excess of the Target Balance, Bank is hereby irrevocably authorized to debit the Account in an amount up to the portion of the balance in the Account which exceeds the Target Balance, and apply such sums to the outstanding balance of the Loans. Bank agrees to make such debit of the Account to repay sums outstanding under the Loans as of the end of each Business Day; provided, however, that in the event the option labeled "Cash Solutions Protection" is marked on Exhibit A attached hereto, Bank shall not automatically debit the Account to make payments on the Loans, but may do so, in its sole and absolute discretion.
3. **TERMINATION.** The procedure for making Loans, and the obligation of Bank to provide Loans, as set forth in this Promissory Note, may be terminated by Borrower upon ten (10) days prior written notice to Bank and may be terminated by Bank upon thirty (30) days prior written notice to Borrower. Upon termination, no further Loans shall be made under this Promissory Note, but all other terms of this Promissory Note (including, but not limited to, the holder's right to demand payment at any time and for any reason) shall remain in full force and effect.

4. INTEREST. From the date hereof until all sums due hereunder, including principal, interest, charges, fees and expenses are paid in full, the principal amount outstanding from time to time pursuant to this Promissory Note shall bear interest as follows (Check One):

- Fluctuating Rate. At a fluctuating rate equal to \_\_\_\_\_ % per annum above the Prime Rate in effect from time to time. Bank at its discretion may charge a lesser rate from time to time. Interest on the principal amount outstanding shall be adjusted daily, with the rate for each day being adjusted to reflect the Prime Rate in effect at the close of business on that day. Bank makes loans at interest rates at, above and below the Prime Rate.
- Other. (describe): Interest shall accrue at a rate per annum equal to the Bank's Base Rate minus 1/2% as in effect from time to time.

5. CALCULATION OF INTEREST. Interest shall be calculated on the basis of a three hundred sixty (360) days per year factor applied to the actual days on which there exists an unpaid balance hereunder.

6. REPAYMENT. Borrower shall make payments of principal and interest in accordance with the following terms:

- (a) Principal: ALL SUMS OUTSTANDING UNDER THIS PROMISSORY NOTE, INCLUDING THE PRINCIPAL AMOUNT OF ALL OF THE LOANS, ARE IMMEDIATELY DUE IN FULL UPON THE FIRST TO OCCUR OF: (I) THE DEMAND OF THE HOLDER OF THIS PROMISSORY NOTE, WHICH DEMAND MAY BE MADE AT ANY TIME AND FOR ANY REASON, IN THE SOLE AND ABSOLUTE DISCRETION OF THE HOLDER OF THIS PROMISSORY NOTE; OR (II) THE OCCURRENCE OF ANY DEFAULT UNDER THE TERMS OF THIS PROMISSORY NOTE <sup>with 30 days written notice</sup>
- (b) Interest: Borrower shall make payments of all accrued and unpaid interest on the 31st day of each successive month, beginning on March 31, 1999 and continuing until all sums outstanding hereunder are paid in full.

Borrower may prepay this Promissory Note in whole or in part at any time or from time to time without premium or additional interest.

7. LATE PAYMENT CHARGE. If any payment due hereunder (including any payment in whole or in part of principal) is not received by the holder within fifteen (15) calendar days after its due date, Borrower shall pay a late payment charge equal to five percent (5%) of the amount then due.

8. APPLICATION OF PAYMENTS. All payments made pursuant to this Promissory Note shall be applied first to accrued and unpaid interest, then to unpaid expenses and charges payable hereunder, and then to principal, or in such other order or proportion as the holder, in the holder's sole discretion, may elect from time to time.

9. SECURITY. <sup>See below → Unsecured</sup> Sums due under this Promissory Note are secured by, and Borrower grants to Bank a security interest in, all deposits and property of Borrower now or at any time hereafter in the possession of or on deposit with Bank whether as custodian or depository or in any other capacity. Bank shall have the right to set-off and apply against the obligations of Borrower to Bank evidenced by this Promissory Note any sums of Borrower at any time on deposit with Bank whether such deposits are special, time or demand, provisional or final. In addition, this Promissory Note is secured by any property described as collateral in any security agreement, pledge agreement or other document previously, simultaneously, or hereafter entered into by Borrower in connection with any obligation or liability of Borrower to Bank or any corporate affiliate of Bank, such other security documents include but are not limited to the following:

- Security Agreement(s)
- Real estate mortgage or deed of trust on property known as \_\_\_\_\_ located in \_\_\_\_\_ County/City, State of \_\_\_\_\_
- Other (describe): Unsecured

This Promissory Note specifically incorporates by reference, as if fully set forth herein, all of the language and provisions of the security documents described generally or specifically above.

10. REPRESENTATIONS AND WARRANTIES. Borrower (and if more than one Borrower, each Borrower) represents and warrants to Bank that the following statements are true, correct and complete as of the date hereof, and as of the date each Loan is made hereunder: (a) it is duly organized and in good standing under the laws of the state in which it is organized; (b) it has the full power and authority to execute, deliver and perform this Promissory Note; (c) neither such execution, delivery and performance, nor compliance by it with the provisions of this Promissory Note will conflict with or result in a breach or violation of its organizational documents, or any judgment, order, regulation, ruling or law to which it is subject or any contract or agreement to which it is a party or to which any of its assets and properties are subject; (d) this Promissory Note constitutes its legal, valid and binding obligation enforceable in accordance with its terms; (e) there is no litigation or proceeding pending or, to the knowledge of its representative signing this Promissory Note on its behalf, threatened against or affecting it which might materially adversely affect its business, financial condition or operations or its ability to perform and comply with this Promissory Note; (f) all financial statements and information furnished or to be furnished to Bank hereunder have been and will be prepared in accordance with generally accepted accounting principles and fairly present its financial condition as of the dates thereof and the results of its operations for the period covered thereby; (g) it is not in violation of any applicable federal, state or local law, statute, rule, regulation or ordinance and has not received any notice nor is the subject of any investigation to the effect that its operations are not in material compliance with any such law, statute, rule, regulation or ordinance, including, without limitation, applicable environmental, health and safety laws and regulations; (h) since September 2, 1974, no pension, employee benefit, multi-employer, profit sharing, savings, stock bonus or other deferred compensation plan ("Plan") maintained by it or any trade or business group with which it is affiliated subject to the requirements of the Employee Retirement Income Security Act of 1974 ("ERISA") has been terminated, no lien exists against Borrower in favor of the Pension Benefit Guaranty Corporation ("PBGC"), and no "reportable event" (as such term is defined in ERISA) has occurred with respect to any such Plan, and Borrower has not incurred any "accumulated funding deficiency" within the meaning of ERISA or any liability to the PBGC in connection with any Plan; and (i) no information, exhibit, report, statement, certificate or document furnished by Borrower or any other person to Bank in connection with the Loans, this Promissory Note or the negotiation thereof contains any material

misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained herein or therein not misleading.

**11. DEFAULT.** Any of the following will be a default under this Promissory Note: (a) failure to pay any principal, expense, fee, charge or interest when due, or failure to perform any other obligations hereunder; (b) a default by any Borrower upon any of the existing or future obligations of any Borrower to Bank; (c) a default by any guarantor or other person other than Borrower that is now or hereafter liable upon or in connection with any of the obligations of any Borrower to Bank or that has granted any lien or security interest to or for the benefit of Bank to secure any of the obligations of any Borrower to Bank ("Other Obligor"), upon any of the existing or future obligations of any Other Obligor to Bank; (d) a default in any other agreement, instrument or document between any Borrower or Other Obligor and Bank, or any corporate affiliate of Bank, including, without limitation, any security document referred to above, whether previously, simultaneously, or hereafter entered into; (e) ~~a material adverse change in the financial condition of any Borrower or Other Obligor from that expressed in the financial statement most recently submitted to Bank prior to the date of this Promissory Note, as determined in good faith by Bank in its sole discretion~~; (f) institution of bankruptcy, insolvency, reorganization or receivership proceedings by or against any Borrower or Other Obligor in any state or federal court; (g) the appointment of a receiver, assignee, custodian, trustee or similar official under any federal or state insolvency or creditors' rights law for any property of any Borrower or Other Obligor; (h) failure of any Borrower or Other Obligor to furnish to Bank such collateral or additional collateral as Bank may in good faith request; (i) any warranty, representation, or statement to Bank by or on behalf of any Borrower or Other Obligor proving to have been incorrect in any material respect when made or furnished; (j) the occurrence of any event which is, or would be with the passage of time or the giving of notice or both, a default under any indebtedness of any Borrower or Other Obligor to any person other than Bank; (k) any material loss, theft or substantial damage, which is not fully insured, to any of the assets of any Borrower or Other Obligor, or the sale, transfer, lease, encumbrance or other disposition of all or any material part of the assets of any Borrower or Other Obligor other than in the ordinary course of business of Borrower or Other Obligor; (l) the entry of any final judgment against any Borrower or Other Obligor for the payment of money in excess of \$5,000.00; (m) the levy upon or attachment of any assets of any Borrower or Other Obligor; (n) ~~the recording of any federal, state or local tax lien against any Borrower or Other Obligor~~; (o) a change of ownership or dissolution, merger, consolidation, liquidation or reorganization of any Borrower or Other Obligor which is a corporation, partnership or other legal entity; (p) ~~the death of any Borrower or Other Obligor who is a natural person~~; (q) failure of any Borrower or Other Obligor to furnish to Bank such financial information as Bank may require from time to time, including, but not limited to, such financial statements as Bank may require; (r) failure of any Borrower or Other Obligor to comply with all laws, rules, regulations and decrees to which such Borrower or Other Obligor may be subject, the violation of which may have a material adverse effect on the business operation or financial condition of such Borrower or Other Obligor; (s) ~~the acquisition by a Borrower of all or substantially all of the assets, properties or equity interest of any other person or entity without Bank's prior written consent~~; (t) failure of any Borrower to maintain its existence in good standing in the jurisdiction of its organization; (u) any of the licenses or permits which are necessary to the conduct of any Borrower's business as now conducted is not maintained in full force and effect; or (v) ~~the determination in good faith by Bank, in its sole discretion, that the ability of any Borrower or Other Obligor to pay or perform any of their respective obligations to Bank is impaired for any reason~~.

**12. REMEDIES.** Upon a default, in addition to all other rights and remedies available to the holder of this Promissory Note under any document or agreement between Borrower and Bank or under applicable law, the holder of this Promissory Note, in the holder's sole discretion and without notice or demand, may raise the rate of interest accruing on the unpaid principal balance outstanding under this Promissory Note by two (2) percentage points above the rate of interest otherwise applicable. The Bank shall have no further obligation to provide any Loans to Borrower following: (a) a demand by Bank for payment hereunder; or (b) a default under this Promissory Note. Borrower agrees that a default under this Promissory Note is a default by Borrower under all other liabilities and obligations of Borrower to the holder, and that the holder shall have the right to declare immediately due and payable all liabilities and obligations owed by Borrower to the holder of this Promissory Note.

**13. CONFESSION OF JUDGMENT.** Borrower irrevocably and unconditionally authorizes any attorney admitted to practice before any court of record in the United States to appear on behalf of Borrower in any court in one or more proceedings, or before any clerk thereof or prothonotary or other court official, and appear for, to confess and enter judgment against Borrower, at any time, whether before or after the occurrence of any default hereunder, with or without averment of default, with or without complaint filed, and without prior notice or opportunity of Borrower for prior hearing, in favor of the holder of this Promissory Note in the full amount outstanding on this Promissory Note (including principal, accrued interest and any and all charges, fees and expenses) plus court costs, plus attorneys' fees equal to fifteen percent (15%) of the unpaid balance of principal, interest, charges, and other sums outstanding hereunder, with release of all errors and without right of appeal. Borrower waives the benefit of any and every statute, ordinance, or rule of court which may be lawfully waived conferring upon Borrower any right or privilege of exemption, homestead rights, appraisement, stay of execution, or supplementary proceedings, or other relief from the enforcement or immediate enforcement of a judgment or related proceedings on a judgment. [To the extent prohibited by applicable law, any judgment obtained by confession shall not constitute a lien on any real property located in Pennsylvania which is the residence of the Borrower.] The authority and power to appear for and enter judgment against Borrower shall not be exhausted by one or more exercises thereof, or by any imperfect exercise thereof, and shall not be extinguished by any judgment entered pursuant thereto; such authority and power may be exercised on one or more occasions from time to time, in the same or different jurisdictions, as often as the holder shall deem necessary or advisable. BORROWER HEREBY ACKNOWLEDGES THAT THE CONFESSION OF JUDGMENT PROVISIONS HEREIN CONTAINED WHICH AFFECT AND WAIVE CERTAIN LEGAL RIGHTS OF BORROWER HAVE BEEN READ, UNDERSTOOD AND VOLUNTARILY AGREED TO BY BORROWER.

**14. EXPENSES.** Borrower shall pay all costs and expenses, including attorneys' fees (to the extent not prohibited by law) incident to the making of the Loans. Borrower shall pay all costs and expenses incurred by Bank in collecting sums due under this Promissory Note, including without limitation the costs of any lien, judgment or other record searches, appraisals, travel expenses and the like. In addition, if this Promissory Note is referred to an attorney for collection, whether or not judgment has been confessed or suit has been filed, Borrower shall pay all of the holder's costs, fees (including, but not limited to, the holder's attorneys' fees, charges and expenses) and all other expenses resulting from such referral.

**15. AMENDMENTS.** The fees and charges required to be paid by Borrower in connection with the Loans may, at any time and from time to time, be amended by Bank, upon prior written notice thereof to Borrower and otherwise in compliance with applicable law. Any such amendment shall become effective on the first day of the month in which Borrower obtains a Loan, after the date specified in the notice of amendment (which date shall be not less than thirty (30) days from the date

the notice was mailed to Borrower), or upon such other date as may be required in accordance with applicable law. If Borrower obtains a Loan after the date specified in the notice, the changes in the fees and charges described in the amendment shall apply to all outstanding unpaid indebtedness and obligations under this Promissory Note, whether incurred or arising prior to, upon, or after the effective date of the amendment.

**16. NEGOTIABLE INSTRUMENT.** Borrower agrees that this Promissory Note shall be deemed to be a negotiable instrument, even though this Promissory Note may not qualify under applicable law, absent this paragraph, as a negotiable instrument.

**17. WAIVERS.** Borrower, and all parties to this Promissory Note, whether maker, indorser, or guarantor, waive presentment, demand, notice of dishonor and protest.

**18. EXTENSIONS OF MATURITY.** All parties to this Promissory Note, whether maker, indorser, or guarantor, agree that the maturity of this Promissory Note, or any payment due hereunder, may be extended at any time or from time to time without releasing, discharging, or affecting the liability of such party.

**19. NOTICES.** Any notice or demand required or permitted by or in connection with this Promissory Note, without implying the obligation to provide any notice or demand, shall be in writing at the address set forth below or to such other address as may be hereafter specified by written notice to Bank by Borrower. Any such notice or demand shall be deemed to be effective as of the date of hand delivery or facsimile transmission, one (1) day after dispatch if sent by telegram, mailgram, overnight delivery, express mail or federal express, or three (3) days after mailing if sent by first class mail with postage prepaid.

**20. ASSIGNABILITY.** This Promissory Note may be assigned by Bank or any holder at any time.

**21. JOINT AND SEVERAL LIABILITY.** If more than one person or entity is executing this Promissory Note as Borrower, all liabilities under this Promissory Note shall be joint and several with respect to each of such persons or entities.

**22. BINDING NATURE.** This Promissory Note shall inure to the benefit of and be enforceable by Bank and Bank's successors and assigns and any other person to whom Bank may grant an interest in Borrower's obligations to Bank, and shall be binding and enforceable against Borrower and Borrower's personal representatives, successors and assigns.

**23. INVALIDITY OF ANY PART.** If any provision or part of any provision of this Promissory Note shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Promissory Note and this Promissory Note shall be construed as if such invalid, illegal or unenforceable provision or part thereof had never been contained herein, but only to the extent of its invalidity, illegality or unenforceability.

**24. MAXIMUM RATE OF INTEREST; COMMERCIAL LOAN.** Notwithstanding any provision of this Promissory Note to the contrary, Borrower shall not be obligated to pay interest hereunder in excess of the maximum rate of interest permitted by the laws of any state determined to govern this Promissory Note or the laws of the United States applicable to loans in such state. If any provision of this Promissory Note shall ever be construed to require the payment of any amount of interest in excess of that permitted by applicable law, then the interest to be paid hereunder shall be held subject to reduction to the amount allowed under applicable law, and any sums paid in excess of the interest rate allowed by law shall be applied in reduction of the principal balance outstanding under this Promissory Note. Borrower acknowledges that it has been contemplated at all times by Borrower that the laws of the Commonwealth of Pennsylvania will govern the maximum rate of interest that it is permissible for the holder of this Promissory Note to charge Borrower under this Promissory Note. Borrower warrants that this Promissory Note evidences a loan made solely to acquire or carry on a business or commercial enterprise.

**25. CHOICE OF LAW; CONSENT TO VENUE AND JURISDICTION.** This Promissory Note shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, even if the Commonwealth of Pennsylvania rules governing conflicts of laws would otherwise require that the laws of another jurisdiction govern this Promissory Note. Borrower consents to the jurisdiction and venue of the courts of any city or county in the Commonwealth of Pennsylvania or to the jurisdiction and venue of the United States District Court for the Middle District of Pennsylvania in any action or judicial proceeding brought to enforce, construe or interpret this Promissory Note.

**26. UNCONDITIONAL OBLIGATIONS.** Borrower's obligations under this Promissory Note shall be the absolute and unconditional duties and obligations of Borrower and shall be independent of any rights of set-off, recoupment or counterclaim which Borrower might otherwise have against the holder of this Promissory Note, and Borrower shall pay absolutely the payments of principal, interest, fees, charges and expenses required hereunder, free of any deductions and without abatement, diminution or set-off.

**27. ACTIONS AGAINST BANK.** Any action brought by Borrower against Bank which is based, directly or indirectly, or in whole or in part, upon this Promissory Note or any matter related to this Promissory Note shall be brought only in the courts of the Commonwealth of Pennsylvania.

**28. WAIVER OF JURY TRIAL.** Borrower (by execution of this Promissory Note) and Bank (by acceptance of this Promissory Note) agree that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by Borrower, Bank, or any successor or assign of Borrower or Bank on or with respect to this Promissory Note or which in any way relates, directly or indirectly, to the obligations of Borrower to Bank under this Promissory Note, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. **BORROWER AND BANK HEREBY EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING.** Borrower and Bank acknowledge and agree that this provision is a specific and material aspect of the agreement between the parties and that Bank would not enter into the transaction with Borrower if this provision were not a part of their agreement.

[SIGNATURES CONTAINED ON NEXT PAGE]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned executes this Promissory Note under seal, as Borrower, as of the date first written above.

WITNESS/ATTEST\*: \_\_\_\_\_



E. M. Avery, Assistant Secretary  
(Print Name)

\_\_\_\_\_  
(Print Name)

CCI Construction Co., Inc.

(Name of Organization)

7500 Old Gettysburg Rd

(Street Address)

Camp Hill, Pa 17011

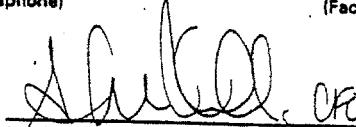
(City-State-Zip)

717-909-4224 717-909-4600

(Telephone)

(Facsimile)

By:

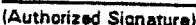
  
(Authorized Signature)

(SEAL)

Sheri Phillips, CFO

(Print Name and Title)

By:

  
(Authorized Signature)

(SEAL)

\_\_\_\_\_  
(Print Name and Title)

\*NOTE: Attestation by a corporate officer of another corporate officer's capacity to sign is required in all corporate transactions.

If Borrower is an individual he or she should sign below:

WITNESS: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

(SEAL)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City-State-Zip)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(Facsimile)

**EXHIBIT A**  
**FILM/Cash Solutions Promissory Note**

Account Number: 28864514

Borrower: CCI Construction Co., Inc.

The terms and provisions of the option checked below are incorporated in and made a part of the FILM/Cash Solutions Promissory Note executed by Borrower to which this Exhibit A is attached:

FILM LOAN OPTION - The following terms apply to this option:

- i) Maximum Line Amount - \$4,000,000.00
  - ii) Minimum Loan Advance - \$0.01
  - iii) Incremental Advance Amount - \$1.00
  - iv) Target Balance - \$ 0
  - v) Fees - \$ 0

[ ] CASH SOLUTIONS PROTECTION OPTION - The following terms apply to this option:

- II) Maximum Line Amount - \_\_\_\_\_
  - III) Minimum Loan Advance - \$500.00
  - IV) Incremental Advance Amount - \$500.00
  - V) Target Balance - \$\_\_\_\_\_
  - VI) Fees - \_\_\_\_\_

[ ] CASH SOLUTIONS MAXIMIZER OPTION - The following terms apply to this option:

- i) Maximum Line Amount - \_\_\_\_\_
  - ii) Minimum Loan Advance - \$500.00
  - iii) Incremental Advance Amount - \$500.00
  - iv) Target Balance - \$ \_\_\_\_\_
  - v) Fees - \_\_\_\_\_
  - vi) Balance in Account is not transferred to investments until all Loans are paid in full.

CASH SOLUTIONS LOAN OPTION • The following terms apply to this option:

- ii) Maximum Line Amount - \_\_\_\_\_
  - iii) Minimum Loan Advance - \$500.00
  - iv) Incremental Advance Amount - \$500.00
  - v) Target Balance - \$\_\_\_\_\_
  - vi) Fees - \_\_\_\_\_

**WITNESS/ATTEST:**

**BORROWER:**

CCI Construction Co., Inc.

By

Name: Sheri Phillips (SEAL)  
Title: CFO

If Borrower is an individual he or she should sign below:

Name: \_\_\_\_\_ (SEAL)

# EXHIBIT B



allfirst

COMMERCIAL LOAN NOTE  
LINE OF CREDIT.

COPY

\$ 1,200,000.00

Date 11-8-94

FOR VALUE RECEIVED, the undersigned, CCI Construction Co., Inc., a corporation/partnership/limited liability company/individual (the "Borrower"), jointly and severally (if more than one), promise to pay to the order of ALLFIRST BANK, a Maryland state-chartered commercial bank (the "Bank") or its assigns, the principal amount of ONE MILLION TWO HUNDRED THOUSAND & NO/100 DOLLARS to be paid as follows:

Principal is payable on demand.

Interest is payable monthly, accrued to date of Bank's notice thereof, with all accrued and unpaid interest, and unpaid fees and charges, due with the principal payment.

EXHIBIT

Ortenzio  
21361 928

Interest shall accrue at a rate per annum equal to the Bank's Base Rate minus .50000% as in effect from time to time. The term "Bank's Base Rate," which is not necessarily the lowest rate of interest charged by the Bank, is defined as the prime rate of interest for loans established by the Bank from time to time.

Interest shall be calculated on the basis of the actual number of days elapsed and a year of 360 days. Both principal and interest are payable in lawful money of the United States of America at any office of Bank in immediately available funds. If any payment due hereunder is received by the Bank more than fifteen (15) calendar days after its due date, the Borrower shall pay a late payment charge equal to five percent (5%) of the amount then due or \$10.00, whichever is greater.

**APPLICATION OF PAYMENTS.** All payments made hereunder shall be applied first to late payment charges or other sums owed to the Bank, next to accrued interest, and then to principal, or in such other order or proportion as the Bank, in its sole and absolute discretion, may elect from time to time.

**SECURITY.** The payment of this note and any renewals, extensions and modifications thereof, and the payment, performance and discharge of all other present or future indebtedness, obligations and undertakings (individual, joint, several, direct, contingent or otherwise) of the Borrower to or for the benefit of the Bank, whether arising directly to the Bank under this note or under any other agreement, promissory note or undertakings now existing or hereinafter entered by the Borrower to the Bank (collectively, the "Liabilities") is secured by the property described in, and under and pursuant to the terms and conditions of that certain:  
 Collateral as set forth in a Security Agreement - Specific Collateral dated 11/18/99.

As additional security for the Liabilities, Borrower grants the Bank a lien upon and a security interest in any securities, instruments or other personal property of Borrower now or hereafter in Bank's possession and in any deposit balances now or hereafter held by Bank for Borrower's account and in all proceeds of any such personal property or deposit balances. Such liens and security interests shall be independent of Bank's right of setoff.

**STATEMENT OF ACCOUNT.** The Bank will furnish the Borrower with a statement of account on a periodic basis. Each and every statement of account shall be final, conclusive and binding upon the Borrower in all respects as to the outstanding balance of principal and as to all loans, fees, interest, charges, payments, receipts, balances, and all other matters reflected therein unless the Borrower, within ten (10) days after the posting thereof in the United States mail, shall give notice to the Bank in writing of any objections which the Borrower may have to any such statement of account; and in such event, only those items expressly objected to in such written notice shall be considered to be disputed by the Borrower and all other items shall be binding.

**PAYMENT OF COSTS.** In addition to the principal and interest payments specified above, the Borrower shall pay to the Bank or any other holder of this note, upon demand, all costs and expenses (including reasonable attorneys' fees, whether or not litigation is commenced) which may be incurred by the Bank or such holder in the collection or enforcement of this note. Said costs shall include reasonable attorneys' fees and costs in bankruptcy proceedings and any costs and attorneys' fees incurred for any action or proceeding in relation to the loan transaction, including but not limited to the joinder of Bank in any action between the Borrower and a third party.

**DEFAULTS.** The Borrower shall be in default hereunder upon the occurrence of any of the following events: (a) the nonpayment when due of any amount payable on any of the Liabilities, or the failure of any Obligor to observe or perform any agreement of any nature whatsoever with the Bank (the term "Obligor" as used herein being meant to include the Borrower and all persons liable on the note or any renewals, extensions, or modification thereof, such as endorsers, sureties, or guarantors); (b) if any Obligor becomes insolvent or makes an assignment for the benefit of creditors, or if any petition is filed by or against any Obligor under any provisions of any law or statute alleging that such Obligor is insolvent or unable to pay debts as they mature; (c) the entry of any judgment against any Obligor or the issuing of any attachment or garnishment against any property of any Obligor or the occurrence of any change in the financial condition of any Obligor which in the sole judgment of the Bank is materially adverse; (d) the dissolution, merger, consolidation or reorganization of any Obligor, which is an entity such as a corporation, limited partnership, partnership or limited liability company; (e) the death of any Obligor who is a natural person; (f) any information heretofore or hereinafter furnished to the Bank by any Obligor in connection with the loan evidenced hereby or any suretyship or guaranty should be materially false; and (g) the failure of any Obligor to furnish such financial and other information as the Bank may reasonably request. If this Note is payable on demand, Bank's right to demand payment hereof shall not be restricted or impaired by the absence of, non-occurrence of or waiver of a default hereunder, and it is understood that Bank may demand payment at any time after giving Borrower a 30-day written notice of demand.

30 days written notice

**ACCELERATION AND ENFORCEMENT RIGHTS.** Whenever the Borrower shall be in default as aforesaid, (1) unless the Bank elects otherwise, the entire unpaid amount of such of the Liabilities as are not then due and payable shall become immediately due and payable without notice to or demand on any Obligor, and (2) the Bank may at its option exercise from time to time any or all rights and remedies available to it at law or in equity. The Borrower waives all right to stay of execution or garnishment and exemption of property in any action to enforce any of the Liabilities.

reasonable attorney fees

**JUDGMENT.** The Borrower does hereby authorize and empower any attorney of any court of record of Pennsylvania or elsewhere to appear for and enter judgment against Borrower for the above sum, with or without declaration, with costs of suit, including reasonable attorneys' fees and fees in bankruptcy proceedings, if any, release of errors, without stay of execution, and with fifteen (15%) percent added for collection fees, and the Borrower further agrees that real, personal or mixed property may be sold or garnished upon any writ of execution or writ of garnishment as now or hereafter provided by law or the Pennsylvania Rules of Civil Procedure governing the enforcement of judgments; and Borrower hereby waives and releases all relief from any appraisement, stay or exemption laws of any state now in force or hereafter enacted. If a copy hereof, verified by affidavit, shall have been filed in such proceeding, it shall not be necessary to file the original as a warrant of attorney. The Borrower (and each of them, if more than one) hereby waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect. No single exercise of this warrant and power to confess judgment shall be deemed to exhaust this power, whether or not any such exercise shall be held by any court to be invalid, voidable or void; but this power shall continue undiminished and may be exercised from time to time as often as Bank shall elect until all sums due hereunder shall have been paid in full.

**WAIVERS.** The Borrower hereby waives presentment, notice of dishonor and protest. The Borrower hereby waives and releases all errors, defects and imperfections of a procedural nature in any proceedings instituted by the Bank hereunder, or personal, or any part of the proceeds arising from any sale of such property, from garnishment, attachment, levy or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment. The Borrower agrees that any property, real or personal, that may be levied upon pursuant to any writ of execution or writ of garnishment issued on any judgment by virtue of this note, may be sold, in whole or in part, in any order desired by the Bank.

**HOLDERS IN DUE COURSE.** This note may be assigned by the Bank or any subsequent holder of this note at any time or from time to time. The Borrower hereby agrees that no subsequent holder of this note to whom the note was transferred for value shall be subject to any claims or defenses which the Borrower may have against a prior holder, all of which are waived as to such subsequent holder, and that all such subsequent holders shall have all of the rights of a holder in due course even though the subsequent holder may not qualify, under applicable law, absent this paragraph, as a holder in due course.

**MISCELLANEOUS.** Any failure of the Bank to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other right at any other time. If the Borrower consists of more than one person, such persons shall be jointly and severally liable hereunder. The Borrower intends this to be a sealed instrument and to be legally bound binding and enforceable against the Borrower, its legal representatives, successors and permitted assigns. All issues arising hereunder shall be governed by the laws of Pennsylvania without giving effect to choice of law rules.

WITNESS OR ATTEST:

CCI Construction Co., Inc.

BORROWER:

  
Name and Title \_\_\_\_\_ (Seal)

(Name of Individual, Corporation,  
Partnership or Limited Liability Company)

Name and Title \_\_\_\_\_ (Seal)

By:  \_\_\_\_\_ (Seal)  
Name and Title \_\_\_\_\_

Name and Title \_\_\_\_\_ (Seal)

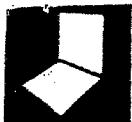
By: \_\_\_\_\_ (Seal)  
Name and Title \_\_\_\_\_

Name and Title \_\_\_\_\_ (Seal)

By: \_\_\_\_\_ (Seal)  
Name and Title \_\_\_\_\_

2500 Old Gettysburg Road Camp Hill, PA 17001  
Address

# EXHIBIT C



allfirst

## EXHIBIT

Ortenzio  
213181 TUS

SURETYSHIP AGREEMENT

under the \$1,200,000 commercial loan note dated 11-8-99 JEP

Date

11-8-99

JMD (D)

For value received, the Undersigned, jointly and severally, hereby unconditionally agree to make prompt payment of all obligations, indebtedness and liabilities due Allfirst Bank, a Maryland state-chartered commercial bank, hereinafter called "Bank," of any kind, whether now existing or hereafter arising, due or which may become due, whether by acceleration or otherwise, absolute or contingent, joint or several, direct or indirect, secured or unsecured, by CCI Construction Co., Inc.

hereinafter called "Borrower," all such obligations being hereinafter further described and collectively called the "Liabilities," and the Undersigned agree(s) to pay all expenses (including attorneys' fees and legal expenses, whether or not litigation is commenced) paid or incurred by the Bank in endeavoring to collect the Liabilities, or any part thereof, whether or not bankruptcy has been declared, and in enforcing this Suretyship Agreement. The liability of the Undersigned hereunder is a primary and direct obligation without regard to any other obligor or security or collateral held by the Bank.

The Undersigned hereby waive all notices of any character whatsoever with respect to this Suretyship Agreement and the Liabilities of the Borrower for which the Suretyship Agreement has been executed, including but not limited to notice of the acceptance hereof and reliance hereon and notice of default by the Borrower. The Undersigned hereby give consent to the Bank to the taking of, or failure to take, from time to time, without notice to the Undersigned, any action of any nature whatsoever with respect to the Liabilities of the Borrower, with respect to any rights against any person or persons, including the Borrower and any of the Undersigned, in any property, including, but not limited to, any postponements, compromises, indulgences, waivers, extensions, exchanges, releases, and satisfactions. The Undersigned shall remain fully liable on this Suretyship Agreement, notwithstanding any of the foregoing.

This Suretyship Agreement shall in all respects be a continuing, absolute and unconditional one, and shall remain in full force and effect (notwithstanding, without limitation, the death, incompetency or dissolution of any of the Undersigned or that at any time, or from time to time, all Liabilities may have been paid in full). This Suretyship Agreement is subject to discontinuance as to any of the Undersigned only upon actual receipt by the Bank of written notice from such Undersigned, or any person duly authorized and acting on behalf of such Undersigned, of the discontinuance hereof as to such Undersigned; provided, however, that no such notice of discontinuance shall affect or impair any of the agreements and obligations of such Undersigned hereunder with respect to (a) any and all Liabilities existing prior to the time of actual receipt of such notice by the Bank, (b) any and all Liabilities created or acquired thereafter pursuant to any previous binding commitments made by the Bank, (c) any and all extensions or renewals of any of the foregoing, (d) any and all interest on any of the foregoing, and (e) any and all expenses paid or incurred by the Bank in endeavoring to collect any of the foregoing and in enforcing this Suretyship Agreement against such Undersigned. All obligations of the Undersigned under this Suretyship Agreement shall, notwithstanding any such notice of discontinuance, remain fully in effect until all Liabilities not subject to an effective notice of discontinuance (including any extensions or renewals of any thereof) and all such interest and expenses shall have been paid in full. Any notice of discontinuance by or on behalf of any one of the Undersigned shall not affect or impair the obligations hereunder of any other of the Undersigned.

At the option of Bank, all Liabilities of Borrower shall become immediately due and payable by the Undersigned, without demand or notice, in the event any of the following shall occur: (a) Borrower shall fail to make any payment or meet any other liability when due; (b) Borrower or the Undersigned shall fail to observe or perform any obligation, term, condition or provision of Borrower under any document evidencing or securing the Liabilities, this Suretyship Agreement or any other agreement, document, certificate, instrument of security, suretyship or guaranty given by Borrower to Bank; (c) Any representation, warranty or certificate made or furnished by Borrower to Bank, in connection with the Liabilities or any other agreement, document, certificate, instrument of security, suretyship or guaranty given by Borrower to Bank or in any certificate, financial statement or separate assignment made hereunder shall be materially false; (d) Borrower or any of the Undersigned shall make an assignment for the benefit of creditors; (e) Proceedings in bankruptcy or for reorganization of Borrower or any of the Undersigned or for the readjustment of any of their debts under the Bankruptcy Act, as amended, or in any part thereof, or under any other act or law, whether state or federal, for the relief of debtors now or hereafter existing, shall be commenced by or against Borrower or the Undersigned; (f) A receiver or trustee shall be appointed for Borrower or any of the Undersigned or for any substantial part of their assets; or any proceedings are instituted for the dissolution, or the full or partial liquidation, of Borrower or any of the Undersigned; (g) Material adverse changes in the financial condition of the Borrower or any of the Undersigned; (h) A death of Borrower or any of the Undersigned or, if Borrower or the Undersigned is a partnership, the death of any general partner; or (i) Borrower or any of the Undersigned ceases doing business as a going concern.

As security for the Liabilities hereunder, the Undersigned hereby grants Bank a security interest in the following:  
NONE

Together with a right, without demand or notice of any kind, at any time and from time to time when any amount shall be due and payable by the Undersigned hereunder and in such order of application as the Bank may elect, to set-off against all monies, deposits or other property of any kind, without limitation, owned by the Undersigned or in which the Undersigned has a joint or contingent interest and which are in possession of Bank for any reason whatsoever.

The Undersigned further agree that, if at any time, any part of any payment theretofore applied by the Bank to any of the Liabilities is or must be returned by the Bank for any reason whatsoever (including, without limitation, the insolvency, bankruptcy or reorganization of the Borrower), such Liabilities shall, for the purposes of this Suretyship Agreement, to the extent that such payment is or must be rescinded or returned, be deemed to have continued in existence, notwithstanding such application by the Bank, and this Suretyship Agreement shall continue to be effective or be reinstated, as the case may be as to such Liabilities, all as though such application by the Bank had not been made. In such an event the Undersigned hereby waives any right of contribution, subrogation or indemnification against the Borrower, for a period of twelve (12) months subsequent to the last payment made or due to be made from Borrower to Bank.

The Bank may, from time to time, whether before or after any discontinuance of this Suretyship Agreement, at its sole discretion and without notice to the Undersigned (or any of them), take any or all of the following actions: (a) retain or obtain a security interest in any property to secure any of the Liabilities or any obligation hereunder; (b) retain or obtain the primary or secondary obligation of any obligor or obligors in addition to the Undersigned, with respect to any of the Liabilities; (c) extend or renew for one or more periods (whether or not longer than the original period), alter or exchange any of the Liabilities, or release or compromise any obligation of any of the Undersigned hereunder or any obligation of any nature of any other obligor with respect to any of the Liabilities; (d) release its security interest in, or surrender, release or permit any substitution or exchange for, all or any part of any property securing any of the Liabilities or any obligation hereunder, or extend or renew for one or more periods (whether or not longer than the original period) or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such property; and (e) resort to the Undersigned (or any of them) for payment of any of the Liabilities, whether or not the Bank shall have resorted to any property securing any of the Liabilities for payment of any of the Liabilities, or any obligation hereunder or shall have proceeded against any other of the Undersigned or any other obligor primary, or secondary, obligated with respect to any of the Liabilities.

Any amounts received by the Bank from whatsoever source on account of the Liabilities may be applied by Bank toward the payment of such of the Liabilities and in such order of application, as the Bank may from time to time elect; and, notwithstanding any payments made by or for the account of the Undersigned pursuant to this Suretyship Agreement, the Undersigned shall not be subrogated to any rights of the Bank until such time as this Suretyship Agreement shall have been discontinued as to all of the Undersigned and the Bank shall have received payment of the full amount of all Liabilities and of all obligations of the Undersigned hereunder. The Bank shall not be obligated under any theory of law relating to the marshalling of payment received or security interest granted under the terms of this Suretyship Agreement.

The Bank may, from time to time, before or after any discontinuance of this Suretyship Agreement, without notice to the undersigned (or any of them), assign or transfer any or all of the Liabilities or any interest therein; and, notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Liabilities shall be and remain Liabilities for the purpose of this Suretyship Agreement and each and every immediate and successive assignee or transferee of any of the Liabilities or of any interest therein shall, to the extent of the interest of such assignee or transferee, be entitled to the benefits of this Suretyship Agreement to the same extent as if such assignee or transferee were the Bank; provided however, that unless the Bank shall otherwise consent in writing, the Bank shall have an unimpaired right prior and superior to that of any such assignee or transferee, to enforce this Suretyship Agreement for the benefit of the Bank, as to those of the Liabilities which the Bank has not assigned or transferred.

No modification or waiver of any of the provisions of this Suretyship Agreement shall be binding upon the Bank except as expressly set forth in writing, duly signed by each of the Undersigned and the Bank. No action of the Bank permitted hereunder shall in any way affect or impair the rights of the Bank and the obligation of the Undersigned under this Suretyship Agreement. For the purpose of this Suretyship Agreement, Liabilities shall include all obligations of the Borrower to the Bank notwithstanding any right or power of the Borrower or anyone else to assert any claim or defense as to the invalidity or unenforceability of any such obligation and no such claim or defense shall affect or impair the obligations of the Undersigned hereunder.

The Liability of the Undersigned for Liabilities of Borrower incurred on or prior to the date hereof shall not exceed, at any time, the aggregate principal amount of **ONE MILLION TWO HUNDRED THOUSAND & NO/100 DOLLARS** (\$ 1,200,000.00).

, plus interest as stated in the evidence of indebtedness given by Borrower to Bank and fifteen percent (15%) attorneys' commission; provided that this Suretyship Agreement shall also be applicable to and extend to any and all Liabilities, plus interest and costs as aforesaid, of Borrower arising after the date hereof even if the total of such Liabilities plus the Liabilities outstanding on or prior to the date hereof exceed the aforementioned aggregate principal amount. If no limitation is inserted in this paragraph, there is no limit to the liability of the Undersigned to the Bank.

The creation or existence from time to time of Liabilities in excess of any amount to which the right of recovery under this Suretyship Agreement is limited is hereby authorized, without notice to the Undersigned (or any of them), and shall in no way affect or impair the rights of the Bank and the obligation of the Undersigned under this Suretyship Agreement.

The Undersigned, jointly and severally, do hereby authorize and empower any prothonotary or clerk or attorney of any court or record of Pennsylvania or elsewhere, to appear for and confess judgment against any or all of the Undersigned in favor of Bank for the total liability of the Undersigned as set forth herein together with interest thereon, with or without declaration, with costs of suit, release of errors, without stay of execution or garnishment and with fifteen percent (15%) for collection fees, and waive the right of inquisition, and the benefit of all exemption laws now or hereinafter enacted, and agree to condemnation and the sale of real estate or personal property, or a writ of execution.

In the event the Bank acquires any property securing this Suretyship Agreement after a foreclosure sale as to real property or a public auction sale as to personal property, the Undersigned agrees to indemnify and hold the Bank harmless from any loss, costs, or expense which the Bank may sustain as a result of: (a) selling the real or personal property so acquired for less than the total sums owed by the Borrower to the Bank, provided, however, that any such sale by the Bank is done in a commercially reasonable manner or (b) any action brought against the Bank under §548 or §544(b) of the United States Bankruptcy Code, as amended, on the ground that the consideration paid by the Bank for the real or personal property was not "fair equivalent value," within the contemplation of §544(b) of the United States Bankruptcy Code, as amended, or any applicable state fraudulent conveyance act.

The Undersigned waive and release the Bank from any damages which the Undersigned may incur as a result of any intentional or unintentional or negligent action or inaction of the Bank impairing, diminishing, or destroying any of the Undersigned's rights of subrogation which the Undersigned may have upon payment of any of the Borrower's obligations. The Undersigned acknowledges previously having waived, under certain conditions, any such rights.

The Undersigned hereby agrees that this Suretyship Agreement shall apply to any obligation which the Bank may incur as the result of any payment to Bank by or on behalf of the Borrower which is determined to be a preference payment benefiting the undersigned.

If a photostatic copy hereof shall have been filed in any of said proceedings, it shall not be necessary to file the original as a warrant of attorney. The foregoing warrant and power to confess judgment shall not be deemed to have been exhausted by any single exercise thereof, whether or not any such exercise shall be held by any court to be invalid, voidable or void, but may be exercised from time to time, as often as the Bank shall elect, until all sums payable or that may become payable by each of the Undersigned have been paid in full.

A subsequent guaranty or suretyship by the Undersigned or any other guarantor or surety of the Borrower's Liabilities given to the Bank shall not be deemed to be in lieu of or to supersede or terminate this Suretyship Agreement but shall be construed to be additional or supplementary unless otherwise expressly provided therein; and in the event the Undersigned or any other guarantor or surety has given to the Bank a previous guaranty or Suretyship Agreement, this Suretyship Agreement shall be construed to be additional or supplementary, and not to be in lieu thereof or to terminate such previous Suretyship Agreement, guaranty or guarantees unless expressly so provided herein.

This Suretyship Agreement shall be binding upon the Undersigned, and upon the heirs, legal representatives, successors and assigns of the Undersigned, and to the extent that the Borrower or any of the Undersigned is an entity such as a partnership, limited partnership, limited liability company, corporation or any other similar entity, all references herein to the Borrower and to the Undersigned, respectively, shall be deemed to include any successor or successors, whether immediate or remote, to such entity. If more than one party shall execute this Suretyship Agreement, the term "Undersigned" as used herein shall mean all parties executing this Suretyship Agreement and each of them, and all such parties shall be jointly and severally obligated hereunder.

This Suretyship Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania without giving effect to choice of law rules. Wherever possible each provision of this Suretyship Agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any provision of this Suretyship Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Suretyship Agreement.

INTENDING TO BE LEGALLY BOUND HEREBY, the Undersigned have set their respective hands and seals the day and year first above written.

WITNESS OR ATTEST:

(SURETY) John M. Ortensia

Title:

By: \_\_\_\_\_ (SEAL)  
Title: \_\_\_\_\_

Title:

By: \_\_\_\_\_ (SEAL)  
Title: \_\_\_\_\_

Title:

By: \_\_\_\_\_ (SEAL)  
Title: \_\_\_\_\_

# EXHIBIT D

LAW OFFICES  
GEBHARDT & SMITH LLP  
NINTH FLOOR  
THE WORLD TRADE CENTER  
BALTIMORE, MARYLAND 21202-3064

E2

BALTIMORE (410) 752-5830  
WASHINGTON (301) 470-7468

FACSIMILE  
401 381

WRITER'S DIRECT DIAL NUMBER

(410) 385-5100

Writer's E-Mail Address:  
lgebh@gebsmith.com

Refer To File No. 1861

February 24, 2000

*Via Facsimile and Federal Express*

4027 1282 2484

CCI CONSTRUCTION CO., INC.  
2500 Old Gettysburg Road  
Camp Hill, Pennsylvania 17011-7307

Attn: John M. Ortenzio, President

RE: \$4,000,000 Unsecured Revolving Line Of Credit and  
\$2,000,000 Secured Equipment Purchase Line of Credit  
Extended By Allfirst Bank To CCI Construction Co., Inc.

Dear Mr. Ortenzio:

This firm represents Allfirst Bank ("Lender"), which has extended to CCI Construction Co., Inc. ("Borrower") (a) a revolving line of credit in the maximum principal amount of \$4,000,000 pursuant to a FILM/Cash Solutions Promissory Note dated March 24, 1999 ("Film Note") and related documents, and (b) a secured equipment purchase line of credit in the stated principal amount of \$2,000,000 pursuant to a Commercial Loan Note ("Commercial Note") and a Security Agreement, both dated November 20, 1998, and related documents. This letter is being sent at the specific request and direction of the Lender.

As a result of the occurrence of various events which are materially adverse to the financial condition of the Borrower, and as a further result of the insolvency of the Borrower, the Lender hereby declares a default under the Commercial Loan Note and under the Security Agreement. In consequence of this declaration of default under the equipment purchase line of credit, the Lender hereby accelerates and declares immediately due and payable all sums presently outstanding and owing under the equipment purchase line of credit.

As a result of the default under the equipment line of credit, the Borrower is, in turn, in default under the cross-default provisions of Section 11 of the FILM Promissory Note, and the Lender hereby declares the default. In consequence of this default the Bank hereby accelerates and demands immediate payment of all sums presently due and owing under the FILM Promissory Note.

Because of the default under the FILM Promissory Note and the Bank's acceleration and demand for immediate payment of the sums due thereunder no further sums will be advanced under the revolving line of credit evidenced by the FILM/Cash Solutions Promissory Note, effective immediately. Any checks or other payments items in transit will not be honored by the Lender.

GEBHARDT & SMITH

CCI CONSTRUCTION CO., INC.

February 24, 2000

Page 2

The total sums presently due and outstanding under the equipment purchase line of credit and the revolving line of credit, respectively, are as follows:

**Equipment Purchase Line Of Credit**

Principal	\$1,244,116.74
Interest through February 23 2000	\$ 5,237.80
Total	<u>\$1,249,354.54</u>
Interest per day thereafter: \$231.54	

**Revolving Line Of Credit**

Principal	\$2,601,514.01
Interest through February 23, 2000	\$ 26,524.83
Total	<u>\$2,628,038.84</u>
Interest per day thereafter: \$596.18	

As previously stated, the Lender by this letter is demanding immediate payment in full of all sums due and owing to it by the Borrower under both loans. Unless full payment is made by the Borrower immediately upon receipt of this letter, all remedies available to the Lender under applicable law will be pursued without further notice to the Borrower, including the institution of judgment by confession and the enforcement of the Lender's security interest.

This letter is not intended to be a waiver of any rights, remedies, or recourse available to the Lender, nor an election of remedies arising as a result of the defaults or of any other default which may now or hereafter exist with respect to the revolving line of credit and the equipment line of credit. The collection of interest or acceptance of partial payments (that is, less than the total amount due in accordance with the terms of the debt instruments) by the Lender shall not constitute an extension of the maturity date of the revolving line of credit or equipment line of credit or a waiver of the Lender's acceleration of the indebtedness evidenced by the respective debt instruments or of any other rights under the loan documents.

Very truly yours,

Lawrence J. Gebhardt

LJG/dls

cc: Gerard L. Elias, SVP

- ALLFIRST BANK

Robert E. Chernicoff, Esquire

- CUNNINGHAM & CHERNICOFF, P.C.

# Craig J. Schwartz

<p style="text-align: right;">Page 1</p> <p>1        IN THE UNITED STATES DISTRICT COURT      2        FOR THE MIDDLE DISTRICT OF PENNSYLVANIA      3        ALLFIRST BANK :      4        Plaintiff :      5        v.            CA NO. 1:CV-01-0786      6        JOHN M. ORTENZIO :      7        Defendant : Pages 1 - 216      8        -----      9      10      11      12      Deposition of Craig J. Schwartz      13      Baltimore, Maryland      14      Friday, February 15, 2002      15      16      17      18      19      20      21      Reported by: Kathleen R. Turk, RPR-RMR</p>	<p style="text-align: right;">Page 3</p> <p>1        APPEARANCES:      2      3        Gebhardt &amp; Smith, L.L.P.      4        For the Plaintiff ALLFIRST BANK      5        The World Trade Center      6        401 East Pratt Street      7        Ninth Floor      8        Baltimore, MD 21202      9        (410) 385-5100      10      BY: Lawrence J. Gebhardt, Esq.      11      12      Blank, Rome, Comisky &amp; McCauley, L.L.P.      13      For the Defendant JOHN M. ORTENZIO      14      One Logan Square      15      Philadelphia, PA 19103-6998      16      (215) 569-5641      17      BY: Edward I. Swichar, Esq.      18      19      Also Present:      20      John M. Ortenzio      21</p>
<p style="text-align: right;">Page 2</p> <p>1      2      3      4      5        February 15, 2002      6        10:17 a.m.      7      8      Deposition of Craig J. Schwartz held at the offices      9      of:      10      11      12      Blank, Rome, Comisky &amp; McCauley, L.L.P.      13      250 West Pratt Street      14      Eleventh Floor      15      Baltimore, MD 21201      16      17      18      Pursuant to notice, before Kathleen R. Turk, RPR-RMR,      19      a Notary Public of the State of Maryland.      20      21</p>	<p style="text-align: right;">Page 4</p> <p>1      2        CONTENTS      3      EXAMINATION OF CRAIG J. SCHWARTZ BY:            PAGE:      4      MR. SWICHAR:    6      5      MR. GEBHARDT:    175      6      MR. SWICHAR:    192      7      MR. GEBHARDT:    207      8      MR. SWICHAR:    210      9        EXHIBITS      10     SCHWARTZ DEPOSITION EXHIBITS:                    PAGE:      11     1 Commercial Loan Note Line of Credit            6      12     2 Complaint    6      13     3 Fax to Nord from Gibson, 2/14/01            6      14     4 PA Commercial Loan Writeup                    6      15     5 Memo to File from Schwartz, 11/4/99           6      16     6 Discussion Outline, 11/2/99                    6      17     7 Commercial Loan Note Line of Credit           6      18     8 Letter to Ortenzio from Schwartz, 11/5/99    6      19     9 Accumulated Tran List                            6      20     10 Memo to Gibson from Schwartz, 3/3/00        6      21     11 Borrower Rating Summary                           6</p>

1 (Pages 1 to 4)

**Esquire Deposition Services**

**1-800-441-3376**

## Craig J. Schwartz

<p style="text-align: right;">Page 5</p> <p>1    12 Letter to Phillips from Schwartz, 3/23/99    6      2    13 Letter to Ortenzio from Schwartz, 2/15/00    6      3    14 Charge-Off Memorandum                         6      4      5      6      7      8      9      10      11      12      13      14      15      16      17      18      19      20      21</p>	<p style="text-align: right;">Page 7</p> <p>1    A   No.      2    Q   Personal matter?      3    A   Yes.      4    Q   Okay. Well, I'm going to ask you questions involving this case that we're here for, and if at any time you feel that you don't understand the question or it needs clarification, please let me know.      5    Do not nod your head; you have to either say yes or no or something verbal so the Court Reporter can pick it up.      6    If at any time you want to leave to go to the men's room or for any reason you want to take a break, just let me know, okay?      7    A   Yes.      8    Q   Thank you.      9    Mr. Schwartz, would you be kind enough to tell me your educational background?      10   A   I have a Bachelor degree from Pennsylvania State University in Accounting.      11   Q   In Accounting.      12   And when did you obtain that degree?</p>
<p style="text-align: right;">Page 6</p> <p>1    Thereupon,      2                   CRAIG J. SCHWARTZ      3    A Witness, called for oral examination by counsel for      4    the Defendant, having been first duly sworn by the      5    Notary Public, was examined and testified as follows:      6                   (Documents were premarked      7                   by counsel Schwartz      8                   Deposition Exhibit      9                   Nos. 1 - 14.)      10   EXAMINATION BY COUNSEL FOR THE DEFENDANT      11   BY MR. SWICHAR:      12   Q   Good morning, Mr. Schwartz. My name is Ed      13   Swichar, attorney for the Defendant, John Ortenzio, in      14   this lawsuit.      15   We've never met. Have you ever been      16   deposed?      17   A   Yes.      18   Q   Approximately how many times?      19   A   Once.      20   Q   Was that in connection with your being a      21   loan officer for the bank?</p>	<p style="text-align: right;">Page 8</p> <p>1    A   1980.      2    Q   Any subsequent degrees of any kind?      3    A   No.      4    Q   Okay. Did you attend any formal college courses subsequent to your B.S. degree?      5    A   No.      6    Q   Any banking-type seminars?      7    A   Yes.      8    Q   For example, what kind of seminars and how often did you attend in connection with your banking responsibilities?      9    A   We're constantly attending seminars as they relate to the -- all the aspects -- I shouldn't say that -- as it relates to our job as far as lending, credit, underwriting, documentation.      10   Q   Would you in bank parlance be called a lender?      11   A   Yes.      12   Q   That's your responsibility?      13   A   Yes.      14   Q   Okay. Starting with your current employment</p>

2 (Pages 5 to 8)

## Craig J. Schwartz

<p style="text-align: right;">Page 9</p> <p>1 background, could you describe for me by whom or what      2 you are employed, your title, and your      3 responsibilities, since -- from now going back to      4 1980?</p> <p>5 A I've been at Allfirst Bank for eighteen and      6 a half years.</p> <p>7 Q Can I stop you there?</p> <p>8 Allfirst Bank, as it was originally known as      9 Dauphin Deposit?</p> <p>10 A And before that, Bank of Pennsylvania.</p> <p>11 Q Okay. And when did it become Allfirst Bank?</p> <p>12 MR. GEBHARDT: For the record, because      13 the witness may be confused, it actually began as the      14 First National Bank of Maryland, which was historical      15 over the years, they converted to a state charter, and      16 for a short period they were known as FNB Bank, and      17 then it was changed to Allfirst Bank, all within that      18 one-year period of time.</p> <p>19 So the witness --</p> <p>20 MR. SWICHAR: Okay.</p> <p>21 MR. GEBHARDT: That's why you may see</p>	<p style="text-align: right;">Page 11</p> <p>1 lender.</p> <p>2 A Beginning when?</p> <p>3 Q Beginning with the first -- with your first      4 job with the bank.</p> <p>5 A I was a credit analyst, reviewed financial      6 statements, prepared loan writeups for commercial loan      7 officers.</p> <p>8 The best I can recall, I did that for      9 approximately three years.</p> <p>10 Then I was promoted and became the Manager      11 of the Credit Department.</p> <p>12 Q What was the approximate year when that      13 occurred? Approximately.</p> <p>14 What all did you do?</p> <p>15 A 1985?</p> <p>16 Q Okay. That was a question; the voice went      17 up.</p> <p>18 A I was Credit Department Manager then for a      19 year and a half to two years. Then I became a junior      20 lender in the Small Business Lending Unit for another      21 year. And after that, then, was into the commercial</p>
<p style="text-align: right;">Page 10</p> <p>1 on some documents First National, a Division of FNB      2 Bank, or something like that.</p> <p>3 Q (By Mr. Swichar) You were an employee of all      4 those entities, banking entities, that your attorney      5 just mentioned?</p> <p>6 A Yes.</p> <p>7 Q Beginning in 19--when?</p> <p>8 A 1980.</p> <p>9 Q 1980.</p> <p>10 But your first job was with the -- this      11 bank?</p> <p>12 A No, my first job was with a public      13 accountant --</p> <p>14 Q Okay.</p> <p>15 A -- from 1980 until 1983.</p> <p>16 Q Okay. And then in 1983, where did you go to      17 work?</p> <p>18 A Bank of Pennsylvania, which was a bank that      19 Dauphin Deposit had purchased.</p> <p>20 Q Okay. Describe for me going forward your      21 titles and banking responsibilities as a banker, as a</p>	<p style="text-align: right;">Page 12</p> <p>1 lending area, middle market lending.</p> <p>2 Q Is that what you are in now?</p> <p>3 A Yes.</p> <p>4 Q When did you go into the commercial middle      5 market lending area?</p> <p>6 And by the way, that's as a Vice-President?</p> <p>7 A No, that was first as an Assistant      8 Vice-President.</p> <p>9 Q Okay. When did you enter that area of      10 banking?</p> <p>11 Approximately.</p> <p>12 A 1986, '87.</p> <p>13 Q Okay. When did you grow to be a      14 Vice-President in that area?</p> <p>15 A I don't remember.</p> <p>16 Q Okay, but that's your current position?</p> <p>17 A Yes.</p> <p>18 Q What are your duties and responsibilities in      19 that -- as Vice-President in that area?</p> <p>20 A To maintain my existing lending portfolio,      21 generate new business for the bank, refer other</p>

3 (Pages 9 to 12)

## Craig J. Schwartz

<p style="text-align: right;">Page 13</p> <p>1 business to the bank, other areas of the bank.      2 Q As part of your responsibilities, do you      3 periodically evaluate your portfolio?      4 A I don't understand what you mean.      5 Q Well --      6 A Do I --      7 Q -- you indicated that your responsibility is      8 basically to maintain and attract clients.      9 A Yes.      10 Q But with respect to your existing or new      11 clients, do you have any other duties, such as      12 evaluating the financial, your financial relationship      13 with those clients to determine if the loans are still      14 viable, to evaluate clients to determine if new loans      15 should be made if requested by your clients?      16 A Okay. First, we do review financial      17 information on our clients as it is requested by the      18 bank or agreed to in any loans that may be outstanding      19 by the customer at the time.      20 The terms and conditions of the loan      21 determine, determine that.</p>	<p style="text-align: right;">Page 15</p> <p>1 process determine that the loans are to be reviewed on      2 a periodic basis as far as when financial statements      3 are provided, are to be provided to the bank by the      4 customer, that's how often those get, get reviewed.      5 Q How is that determined?      6 A Those in charge of approving the loan      7 usually determine how often that we want to receive      8 financial information.      9 Q Is that you?      10 A No.      11 Q You don't approve the loan?      12 A I have no lending authority.      13 Q Okay. Who has the -- let's say in 1999 and      14 in 2000, 2001 -- who had the lending authority with      15 whom you would be related?      16 A Depending -- how much would the loan be?      17 It varied depending on how much the, the      18 loan would be to a customer.      19 Q Someone above you would determine how often      20 to evaluate a loan or review a loan relationship?      21 A Yes.</p>
<p style="text-align: right;">Page 14</p> <p>1 Q Is there a procedures manual that guides you      2 as to when and how and how often to evaluate a      3 particular loan portfolio?      4 A Not that I'm aware of.      5 Q Okay. Is that within your discretion, then?      6 A No, not in my discretion. It's part of the      7 review, part of the review process of each loan that      8 we have on the books or what is the -- under what      9 conditions each loan was approved and are we to review      10 these financial statements on a periodic basis.      11 Q What guides you in determining whether or      12 not there should be a review or a periodic review or      13 an interim review?      14 A The credit approval process of the bank.      15 Q What is that?      16 I don't understand.      17 Assume that a loan has already been      18 approved. What determines in your discretion how      19 often or how you should evaluate that particular loan      20 relationship?      21 A On loans that as part of the credit approval</p>	<p style="text-align: right;">Page 16</p> <p>1 Q And that would be a person who had the      2 initial lending authority?      3 A Yes.      4 Q Now, even though you didn't have the lending      5 authority, you basically were the point man, the      6 relationship officer, with the customer?      7 A Yes.      8 Q Okay. Did you have any input at all in the      9 loan approval process?      10 A What do you mean by input?      11 Q Was your input requested by those who had      12 the authority?      13 A I prepared what would be the approval -- I      14 would start the approval process from the customer and      15 gather up the information required for them to approve      16 the loan.      17 That would be my input.      18 Q You described yourself as a middle market      19 lender.      20 What is a middle market lender?      21 A Middle market is the way the bank clarifies,</p>

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<p style="text-align: right;">Page 17</p> <p>1 classifies how much, what type of customers I am 2 supposed to be lending to or trying to attract to the 3 bank determined by sales volume of the customer and 4 also by the amount of money to be borrowed by the 5 customer.</p> <p>6 Q Are there parameters?</p> <p>7 A Not in writing; just ball park numbers that 8 have been determined.</p> <p>9 Q What would be ball park numbers?</p> <p>10 Are they ball park numbers related to a 11 borrower's revenues, or a borrower's loans to be, or 12 something else?</p> <p>13 A A little of both.</p> <p>14 Q If someone came to you with a certain 15 request for a certain number, would it have to fall 16 within your authority, or would you refer it somewhere 17 else?</p> <p>18 In other words, I'm just trying to figure 19 out --</p> <p>20 A If it fell within my authority that I'm 21 supposed to be doing, I would end up keeping that.</p>	<p style="text-align: right;">Page 19</p> <p>1 He would have -- I think he would have been 2 my boss' boss; senior, senior lender in 3 Pennsylvania -- senior commercial loan -- senior 4 commercial lender in Pennsylvania.</p> <p>5 Q All right, let's go back.</p> <p>6 Who was your boss?</p> <p>7 A Daryl Myers.</p> <p>8 Q Okay. Did Daryl Myers have authority to 9 make loans?</p> <p>10 A Up to a dollar limit, yes.</p> <p>11 Q What was that dollar limit?</p> <p>12 A I don't recall.</p> <p>13 I believe -- no, I, I don't know. I would 14 have to guess.</p> <p>15 Q Okay. So Daryl Myers was your immediate 16 boss?</p> <p>17 A Yes.</p> <p>18 Q Would you have daily contact with him?</p> <p>19 A Yes.</p> <p>20 Q Okay. For what purpose would you have daily 21 contact with him?</p>
<p style="text-align: right;">Page 18</p> <p>1 Otherwise, I would have referred it out.</p> <p>2 Q Excuse me, let me go through the back door. 3 CCI Construction was a middle market 4 borrower?</p> <p>5 A Yes.</p> <p>6 Q What made it a middle market borrower?</p> <p>7 A Their revenue level and the amount of loans 8 that they had on the books.</p> <p>9 Q What was that revenue level?</p> <p>10 A Well, it was, it was -- it would be less 11 than a hundred and fifty million dollars.</p> <p>12 Q Per year?</p> <p>13 A Yeah.</p> <p>14 Q Okay. And how about a loan on the books?</p> <p>15 A Well, anything less than about thirty 16 million dollars would fall into the middle market 17 area.</p> <p>18 Q Okay. Going back to 1999, 2000, tell me 19 your business relationship with Michael Zarcone.</p> <p>20 A I really don't -- I don't recall what 21 Michael's title was at that time.</p>	<p style="text-align: right;">Page 20</p> <p>1 A Normal day-to-day operations.</p> <p>2 Q Okay. How about Michael Zarcone?</p> <p>3 He was above Daryl Myers?</p> <p>4 A Yes.</p> <p>5 Q How did his job responsibilities differ from 6 Daryl Myers?</p> <p>7 I mean, why would Daryl Myers go to Michael 8 Zarcone, is another way of asking?</p> <p>9 A Daryl would not have sufficient lending 10 authority.</p> <p>11 Daryl would report to Michael on what's 12 going on in the, the bank's area or in the unit that 13 he's in charge of.</p> <p>14 Q How about Jim Trout?</p> <p>15 A Jim Trout was a credit officer at that time.</p> <p>16 He -- his main focus was to, to -- for credit 17 approval, approval of credits.</p> <p>18 Q Was he above or below you -- I'm not clear 19 on that -- or equal?</p> <p>20 A I did not report to him. I had to go to him 21 for credit approval.</p>

5 (Pages 17 to 20)

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<p style="text-align: right;">Page 21</p> <p>1        The credit area is separate from the lending 2        function.</p> <p>3        Q   Explain to me the difference.</p> <p>4        A   Jim Trout as part of the credit area had no 5        sales focus for the bank, was strictly credit, 6        approving, reviewing credit.</p> <p>7        Q   When you say reviewing credit, is that 8        different than reviewing whether loans should be 9        granted, or is that the same thing?</p> <p>10      A   That's the same thing.</p> <p>11      Q   Okay. Is he a numbers cruncher?</p> <p>12      A   No, no.</p> <p>13      Q   Well, it's not clear to me what he did for a 14     living, or does.</p> <p>15      A   The writeup, the loan fact sheet, the 16     spreadsheets of the financial statements of customers 17     that are packaged together, he receives that package 18     from me to review and makes a decision as far as 19     granting or not granting any loans.</p> <p>20      Q   And how does that differ from Mr. Zarcone or 21     Mr. Myers?</p>	<p style="text-align: right;">Page 23</p> <p>1        Q   Mr. Zarcone is not with the bank?</p> <p>2        A   Correct.</p> <p>3        Q   What were the circumstances of his leaving?</p> <p>4        A   I have no idea.</p> <p>5        Q   You don't know if he was asked to leave?</p> <p>6        A   I have no idea.</p> <p>7        Q   Mr. Gibson; what was your relationship with 8        Mr. Gibson in 1999, 2000?</p> <p>9        A   Jamin?</p> <p>10      Q   Yes.</p> <p>11      Q   When would you involve yourself with him?</p> <p>12      A   When there is a problem situation with a 13     loan.</p> <p>14      Q   And Mr. Gibson --</p> <p>15      MR. GEBHARDT: Just for clarification, 16     are you talking when he would involve himself in 1999, 17     or when would he involve himself today?</p> <p>18      I think there's a difference.</p> <p>19      Q   Well, the question was 1999 and 2000.</p> <p>20      If there's a difference between 1999 and 21     2000, let me know.</p>
<p style="text-align: right;">Page 22</p> <p>1        Let me strike that, okay? Let's get to the 2        heart of this.</p> <p>3        If I came to you in 1999 and had the 4        greatest financials in the world and I wanted to 5        borrow from the bank -- I came to you personally -- a 6        million dollars. What would be the process?</p> <p>7        A   I would prepare what I'd need to present the 8        loan. I would give it to my boss for his review.</p> <p>9        Q   Your boss being Mr. Myers?</p> <p>10      A   Correct.</p> <p>11      Q   Okay.</p> <p>12      A   If the loan was above his authority, he 13     could then go to Mr. Trout and/or Mr. Zarcone for 14     approval of that loan.</p> <p>15      Q   That's it?</p> <p>16      A   It could go -- could have gone higher than 17     that, to Mr. Shannon.</p> <p>18      That's -- in real basic, that's what 19     happens.</p> <p>20      Q   Okay. Mr. Myers is still at the bank?</p> <p>21      A   Yes.</p>	<p style="text-align: right;">Page 24</p> <p>1        MR. GEBHARDT: Not to beat around the 2        bush, Mr. Gibson had a different job --</p> <p>3        MR. SWICHAR: I appreciate that.</p> <p>4        MR. GEBHARDT: He had a different job.</p> <p>5        MR. SWICHAR: I understand that -- I 6        knew that, actually.</p> <p>7        MR. GEBHARDT: Okay.</p> <p>8        Q   (By Mr. Swichar) In the year 2000, beginning 9        with January 1, 2000, Mr. Gibson worked in the 10      Baltimore office of the bank?</p> <p>11      A   No, he worked in Harrisburg.</p> <p>12      Q   He worked in Harrisburg, all right.</p> <p>13      What would be your relationship -- what was 14     his job in relation to your job?</p> <p>15      A   His job is special credits that repayment of 16     bank -- of the loans made to customers may be 17     questionable. We would get him involved and his 18     expertise on the situation.</p> <p>19      Q   In early 2000, was he in what bankers would 20     call workout?</p> <p>21      A   Yes.</p>

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1 Q Okay. Workout really means either work out  
 2 or do what you got to do to call the loan, right?  
 3 But they call it workout, work out the  
 4 bank's problem?  
 5 A Yes.  
 6 Q Okay. How about Mr. Gerard Elias?  
 7 What was your business relationship with him  
 8 in, let's say as of January 1, 2000?  
 9 A Well, he was Jamin's boss.  
 10 Q Where -- was he in Harrisburg?  
 11 A No, he's in Baltimore.  
 12 Q He's in Baltimore?  
 13 A Yes.  
 14 Q And what did he do for a living?  
 15 A He was the manager of the workout area of  
 16 the bank.  
 17 I believe he would get called in when -- at  
 18 Jamin's request, not my request.  
 19 Q Okay. Let's now talk about CCI  
 20 Construction.  
 21 That was your borrower, so to speak?

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1 developed your relationship or had a relationship with  
 2 CCI Construction?  
 3 What year was that?  
 4 A I don't recall when that was.  
 5 Q Do you recall what the credit relationship  
 6 was, the loan relationship, the amount that was owed,  
 7 any notes outstanding, when the bank came to -- when  
 8 Mr. Ortenzio and CCI came to you as a borrower?  
 9 A They were a customer of the bank, and I  
 10 don't recall the circumstance why --  
 11 Q What did you inherit?  
 12 A -- when they became that.  
 13 Q What did you inherit is another way of  
 14 asking the question.  
 15 A I don't recall.  
 16 Q No recollection at all?  
 17 A No.  
 18 Q It wasn't originally four million dollars,  
 19 was it?  
 20 A I don't recall.  
 21 Q Okay.

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1 A Yes.  
 2 Q When did CCI Construction come to you and  
 3 become your -- develop its relationship with the bank?  
 4 Do you recall? If you don't, why don't I  
 5 just see if I can help you, perhaps.  
 6 I'm going to show you what has been marked  
 7 for identification as Exhibit S-1, or Schwartz 1. I  
 8 don't know if I spelled your name right on there; if I  
 9 didn't, I apologize.  
 10 A Looks correct.  
 11 Q Good.  
 12 In going through the records that were  
 13 furnished to me, Mr. Schwartz, this appears to be the  
 14 first note or loan transaction that CCI had with the  
 15 bank, then Dauphin Deposit Bank.  
 16 Does this refresh your recollection, or is  
 17 my presumption inaccurate?  
 18 A I don't recall this.  
 19 CCI was a customer of the bank before I  
 20 became its relationship manager, loan officer.  
 21 Q Okay. What was the relationship when you

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1 MR. SWICHAR: Well, I want the record  
 2 to reflect, with Mr. Gebhardt here, that the earliest  
 3 relationship document I have is S-1. If there is  
 4 anything earlier, I would appreciate receiving it.  
 5 We can do that at lunch.  
 6 MR. GEBHARDT: You've got the same  
 7 problem as we have.  
 8 MR. SWICHAR: I know, because I think  
 9 this is the earliest one I could find.  
 10 MR. GEBHARDT: There was something  
 11 referring to -- in '92 -- saying they had been a  
 12 customer since 1990, a letter of recommendation,  
 13 but --  
 14 MR. SWICHAR: Okay. This is at least  
 15 one of the earliest, we can agree to that?  
 16 MR. GEBHARDT: Yeah.  
 17 Q (By Mr. Swichar) I'm going to show you a  
 18 copy of the Complaint that's been filed in this  
 19 lawsuit, and I'll be referring to the various exhibits  
 20 that were attached, Mr. Schwartz.  
 21 And if you turn to Exhibit A, there is a

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<p style="text-align: right;">Page 29</p> <p>1 four million dollar promissory note, apparently signed 2 by CCI in favor of the bank. 3 Do you recall this note? And this note is 4 dated March 24, 1999. 5 A Yes. 6 Q Okay. Were you involved in the process that 7 led to this note? 8 A Yes. 9 Q Can you explain to me how this note came 10 about? 11 Did someone come into the bank and ask you 12 for it, more money, or what? What's your 13 recollection? 14 A It would appear that as a result of Dauphin 15 Deposit and the merger between First National Bank of 16 Maryland came about, this FILM Cash Solutions 17 Promissory Note, was a replacement document for a 18 loan -- for a line of credit note that was previously 19 issued by Dauphin Deposit. 20 Q Let me stop you there. 21 Was it in the same amount or a lesser</p>	<p style="text-align: right;">Page 31</p> <p>1 forward, in contrast to a short-term? 2 A Well, these lines of credit are only 3 approved for a year at a time, so every year it has to 4 be renewed. 5 Q Umh-humh. 6 And had it been renewed in prior years? 7 A I believe so. 8 Q If I told you that the four million dollar 9 note of March 24, 1999, was the eventual outgrowth of 10 the six hundred thousand dollar note of S-1 that goes 11 back to 1992, would that refresh your recollection? 12 A No, but that seems reasonable. 13 Q So this was a long-term relationship? 14 A Since 1992. 15 Q At least? 16 A At least. 17 Q Okay. And the four million dollar note was 18 a note that in some form, in some amount, continued to 19 grow and be renewed as of -- at least beginning in 20 1992 through March, 1999? 21 I'm just trying to establish --</p>
<p style="text-align: right;">Page 30</p> <p>1 amount? 2 A That, I don't recall. 3 Q Okay. This was a substitute note? 4 A Yes. 5 Q But you do not recall if this was the result 6 of a request for increased credit facility? 7 A Not just by looking at the note, I can't 8 determine that. 9 Q Okay. Well, we'll show you some more 10 documents later, but let's keep that in the back of 11 our minds. 12 This is an unsecured note, Exhibit A of the 13 Complaint? 14 A Yes. 15 Q Do you recall any of the approval process in 16 connection with this note off the top of your head? 17 A No, I don't. 18 Q Was this considered part of a long-term loan 19 between the bank and CCI? 20 This was part of a long existing -- 21 preexisting relationship that was intended to go</p>	<p style="text-align: right;">Page 32</p> <p>1 A Apparently. 2 Q Okay. Now, to further refresh your 3 recollection, it's my understanding that in 1999, at 4 least, CCI had two accounts at the bank, a checking 5 account and a payroll account; is that correct? 6 A It sounds correct. 7 Q And there was also something called a cash 8 management facility; is that correct? 9 A Yes. 10 Q And where would CCI's revenues or business 11 deposits be deposited? 12 In the checking account? 13 A Yes. 14 Q Okay. Now, if you look at that Complaint, 15 if you turn to Paragraph 7 -- and just take a moment 16 and read it to refresh your recollection, and then I'm 17 going to ask for some clarifications. 18 (Witness reading.) 19 A Okay. 20 Q Now, this describes correctly the 21 relationship or the procedural relationship between</p>

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<p style="text-align: right;">Page 33</p> <p>1 the checking and the payroll account on one side and      2 the cash management facility on the other; is that      3 right?</p> <p>4 Am I putting it the right way?</p> <p>5 A I didn't --</p> <p>6 MR. GEBHARDT: Objection.</p> <p>7 Q Does this accurately describe the way the      8 cash management facility worked?</p> <p>9 A Yes.</p> <p>10 Q Okay. Is my understanding correct that      11 CCI's deposits would be deposited in the checking      12 account first? Is that right?</p> <p>13 A Yes.</p> <p>14 Q Okay. And each day, the bank would then      15 draw from the line of credit to pay any negative      16 balance on the checking account; is that correct?</p> <p>17 A Yes.</p> <p>18 Q All right. How -- when would that occur?      19 How often would that occur?</p> <p>20 A I believe that occurs once a day.</p> <p>21 Q Okay. What time of the day does that occur?</p>	<p style="text-align: right;">Page 35</p> <p>1 daily to determine --</p> <p>2 A No.</p> <p>3 Q How often would you review that process to      4 determine basically what's been drawn down and what's      5 been swept?</p> <p>6 Let me ask you first, is that your      7 responsibility?</p> <p>8 A No.</p> <p>9 Q Who -- whose responsibility was that?</p> <p>10 A I don't know whose responsibility that is.</p> <p>11 Q Well, would someone at the bank -- maybe you      12 can't identify them, but would someone at the bank      13 have a responsibility to review on any periodic basis      14 the activity in the cash management facility relating      15 to CCI?</p> <p>16 A I don't understand the question.</p> <p>17 Q There's activity relating to the cash      18 management facility on a daily basis, we've      19 established that.</p> <p>20 A Yes.</p> <p>21 Q Did anyone at the bank monitor that to</p>
<p style="text-align: right;">Page 34</p> <p>1 A I believe it's after bank hours, banking      2 hours.</p> <p>3 Q So the bank after hours, daily, would draw      4 from the line of credit to cover any checks that were      5 written by CCI that day?</p> <p>6 A For any checks that were presented for      7 payment on CCI's behalf that day.</p> <p>8 Q That's correct. That's a much better way of      9 saying it.</p> <p>10 Now, the bank conversely, if you will, would      11 on a daily basis sweep from the checking account any      12 business deposits and apply it as a credit to pay down      13 the four million dollar line of credit; is that      14 correct?</p> <p>15 A Yes.</p> <p>16 Q Okay. And that would occur on a daily      17 basis?</p> <p>18 A Yes.</p> <p>19 Q And that would occur after hours?</p> <p>20 A Yes.</p> <p>21 Q Okay. And would you review that process</p>	<p style="text-align: right;">Page 36</p> <p>1 determine, for example, the draws on the line and the      2 credits against the line of credit -- against the      3 line?</p> <p>4 A Not on any predetermined schedule.</p> <p>5 Q Well, my question is did anyone do it, first      6 of all.</p> <p>7 My next question is going to be who would      8 have done that, what department, and would you have      9 ever done that.</p> <p>10 That's a three-part question, there's an      11 objection, so I'll take it apart.</p> <p>12 Would you -- do you know anyone at the bank      13 who would periodically on some schedule, sporadic or      14 otherwise, review the activity of CCI's cash      15 management facility?</p> <p>16 A Yes.</p> <p>17 Q And who or from what department at the bank      18 would do that?</p> <p>19 A It could be from the Cash Management      20 Department to the Deposit Operations, to the Credit      21 Department, and possibly even myself if the need would</p>

9 (Pages 33 to 36)

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<p style="text-align: right;">Page 37</p> <p>1 arise.</p> <p>2 Q You said there's a Cash Management 3 Department.</p> <p>4 Is it their responsibility to review cash 5 management activity for the accounts?</p> <p>6 A They are the ones that put the transactions 7 through on a daily basis, so if that's considered 8 review, then that's what their job is.</p> <p>9 Q Well, for example, would someone sit at a 10 computer desk and review the activity?</p> <p>11 A No. I think the computer does it 12 automatically. They -- as far as checks being 13 presented for payment and any draws off the line 14 happens automatically.</p> <p>15 Q But would anybody review what the computer 16 did automatically; look at a screen and say, this is 17 what the computer did?</p> <p>18 I'm trying to figure out, Mr. Schwartz, and 19 I'm not trying to trick you or be cute, but you have 20 major transactions going in and out of the cash 21 management facility. Somebody at the bank -- correct</p>	<p style="text-align: right;">Page 39</p> <p>1 A I would be prompted to look at it at a 2 request of the borrower to take a look if there was a 3 problem. If somebody in the bank indicated there was 4 a problem, I would review it.</p> <p>5 Other than that, I wouldn't review it, 6 unless there would be a problem -- a problem would 7 be -- would come up.</p> <p>8 Q So even though CCI is your borrower, so to 9 speak, you would not review periodically the activity 10 to determine what's happening with the cash management 11 facility, what's happening with the four million 12 dollar line of credit?</p> <p>13 A That's correct.</p> <p>14 Q And no one at the bank would unless there's 15 a problem?</p> <p>16 A That, I don't know who else would review it.</p> <p>17 Q Is there any procedures manual at the bank 18 that predetermines who reviews activity in a cash 19 management facility and/or how often?</p> <p>20 A I don't know.</p> <p>21 Q Does the bank have a procedures manual?</p>
<p style="text-align: right;">Page 38</p> <p>1 me if I'm wrong -- had to be reviewing that -- like, 2 for example, suppose CCI went over the four million 3 dollar line of credit; someone had to be reviewing 4 this.</p> <p>5 Am I right?</p> <p>6 A If that occurs, a flag comes up, and it -- 7 the checks that are there that would have put it over 8 the four million dollar line of credit would come up 9 as NSF on our system.</p> <p>10 Q Is that the only time somebody would review 11 it?</p> <p>12 A No.</p> <p>13 Q When would someone review the daily 14 activity, or the activity in the cash management 15 facility on a periodic basis, whatever that basis may 16 be?</p> <p>17 A When the loan's coming up for review, our 18 Credit Department may look at that.</p> <p>19 Q When would you look at it?</p> <p>20 What would prompt you to look at it, and how 21 often would you look at it?</p>	<p style="text-align: right;">Page 40</p> <p>1 A I don't know.</p> <p>2 Q You've never looked at one if there is one?</p> <p>3 A That's correct.</p> <p>4 Q You don't recall ever seeing one?</p> <p>5 A Yes.</p> <p>6 Q There's no book of guidelines on when you 7 could, for example, make a loan, when you can call a 8 loan, when you -- what you should do about guarantees, 9 et cetera, et cetera?</p> <p>10 There's no book that provides guidelines for 11 that to lenders?</p> <p>12 A A book of guidelines? A policy manual?</p> <p>13 Q Well, I don't know what your bank calls it 14 because I've never been there, never had the 15 opportunity to review it.</p> <p>16 Is there a policy manual -- tell me what, 17 what manuals you have on your desk or utilize in 18 relation to your job. Let's put it that way.</p> <p>19 A Well, right now, everything's in the 20 computer. I don't have any manuals.</p> <p>21 Q Well, how about in 1999 and 2000?</p>

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<p style="text-align: right;">Page 41</p> <p>1        Was everything in the computer, or did you 2 have manuals?</p> <p>3        A I don't recall at that point if we had 4 manuals or it was all on the computer.</p> <p>5        Q Do you have any old manuals laying around?</p> <p>6        A Not anymore I don't.</p> <p>7        Q You tossed them?</p> <p>8        A I was told to give them back, and somebody 9 got rid of them.</p> <p>10      Q When was that?</p> <p>11      A When Allfirst took over.</p> <p>12      Q Okay. They told you to get rid of them?</p> <p>13      A We were to resubmit them.</p> <p>14      Q And were new ones ever provided?</p> <p>15      A Everything was on the computer.</p> <p>16      Q Okay. What is on the computer that would 17 help me as a lender determine when and what guidelines 18 to follow in the making of a loan?</p> <p>19      A Would you restate that? Ask --</p> <p>20            MR. SWICHAR: Would you read that back, 21 please?</p>	<p style="text-align: right;">Page 43</p> <p>1        A I've had experience doing this, and those 2 that are going to end up approving the loan have 3 experience doing that.</p> <p>4        Q Assuming you didn't have experience, is 5 there anything on your computer that you would be able 6 to look at to guide you?</p> <p>7        A I don't know. It's been quite some time 8 that I've taken a look at that.</p> <p>9        Q Okay.</p> <p>10            MR. SWICHAR: Well, if there are any 11 loan guidelines that are computerized, I'm making a 12 request for them.</p> <p>13            MR. GEBHARDT: I don't know that such, 14 such a thing exists. I strongly doubt it.</p> <p>15            And, you know, we've produced what 16 we're going to produce.</p> <p>17            MR. SWICHAR: I don't know what that 18 means, but I would frankly be shocked if there are no 19 either computerized or -- documents or a manual which 20 would provide procedures and guidelines to a loan 21 officer for the granting of loans.</p>
<p style="text-align: right;">Page 42</p> <p>1            (Question was read by the Reporter.)</p> <p>2        A What kind of loan?</p> <p>3        Q (By Mr. Swichar) A loan that would have gone 4 to CCI.</p> <p>5        A I don't recall there's any specific policy 6 to lending to CCI and the business they were in as a 7 general contractor.</p> <p>8        Q Not as a general contractor, but -- I don't 9 want to limit it to that, please understand.</p> <p>10            Is there anything on your computer that 11 provides guidelines or procedures for the granting of 12 a loan to a company of the size of CCI or of a loan of 13 the size made to CCI?</p> <p>14            Any guidelines or procedures?</p> <p>15        A I don't specifically recall.</p> <p>16        Q Well, if someone came into the bank in 1999 17 or 2000 and wanted a loan, four million dollar line of 18 credit, commercial, is there anything on the computer 19 that you would look at to guide you?</p> <p>20        A No.</p> <p>21        Q Why do you say no?</p>	<p style="text-align: right;">Page 44</p> <p>1            I would, frankly, be shocked, but maybe 2 not with this bank, perhaps.</p> <p>3        Q (By Mr. Swichar) Are there any guidelines or 4 procedures either in a manual or on the computer that 5 deal with the process of a cash management facility?</p> <p>6        A I don't know.</p> <p>7            MR. SWICHAR: I'm making the same 8 request, if there are any manuals or computerized 9 documents that provide guidelines or procedures 10 dealing with a cash management facility.</p> <p>11            MR. GEBHARDT: And I have the same 12 response.</p> <p>13            And I think this is something that's 14 already been taken up with the judge and ruled upon, 15 and our response is as it was before, we complied with 16 the Court Order.</p> <p>17            MR. SWICHAR: And I'm making a new 18 request.</p> <p>19            Are you refusing to produce them?</p> <p>20            MR. GEBHARDT: I am, basically, if 21 that's what you would like to interpret, yes.</p>

11 (Pages 41 to 44)

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<p style="text-align: right;">Page 45</p> <p>1           MR. SWICHAR: I'm not interpreting it.      2   I'm taking it as a no because you're saying --      3           MR. GEBHARDT: Taking it as --      4           MR. SWICHAR: I've made a new request.      5           MR. GEBHARDT: Well --      6           MR. SWICHAR: And the answer is you're      7   not going to produce them because it's not in the      8   Court Order.      9           MR. GEBHARDT: Exactly.      10          MR. SWICHAR: Okay. We'll take that up      11   with the judge, too.      12          Q (By Mr. Swichar) Does the bank have any      13   manuals or computerized records that deal with the      14   procedures and guidelines for providing multiple loans      15   or multiple facilities to the same borrower?      16          A Not that I'm aware of.      17          Q Is it possible they're in the computer?      18          A I highly doubt that.      19          MR. SWICHAR: I'm going to ask again      20   for the bank to look into that, and if there are any      21   such computerized records or manuals, I'm requesting</p>	<p style="text-align: right;">Page 47</p> <p>1           MR. SWICHAR: Same request.      2           Mr. Gebhardt, let me make it clear that      3   I would at least like to know before we go to the      4   judge if these documents or computerized or otherwise      5   exist. If, obviously, they don't exist, there would      6   be no reason to go to the judge. But if you are      7   refusing in the first place to even check out to      8   see if this exists, then I'd like to know that.      9           MR. GEBHARDT: Well, first of all, such      10   documents were not requested by the Defendant in this      11   document production request.      12          Thereafter, there was a request for      13   such materials that formulated itself in a production      14   of the credit policy manual of Allfirst, which is a      15   computerized, extensive, proprietary, and confidential      16   document that does exist.      17          And we took that request to      18   Judge Rambo, we argued what would or would not be      19   produced, and Judge Rambo gave a ruling, and we are      20   living by that ruling.      21          We have given you everything that that</p>
<p style="text-align: right;">Page 46</p> <p>1   it.      2           And I understand you're providing the      3   same answer, which is a negative.      4          Q (By Mr. Swichar) Does the bank have any      5   computerized records or manuals which deal with      6   obtaining or requesting guarantees from borrowers?      7          A Not that I'm aware of.      8           MR. SWICHAR: Same request; same      9   negative response.      10         Q (By Mr. Swichar) Does the bank have any      11   computerized records or manuals that provide      12   guidelines or procedures that deal with the      13   declaration of defaults on loans?      14          A Not that I'm aware of.      15         MR. SWICHAR: Same request; same      16   negative response.      17         Q (By Mr. Swichar) Does the bank have any      18   computerized guidelines or manuals that deal with the      19   bank's freezing of bank accounts, such as checking      20   accounts and/or bouncing checks or dishonoring checks?      21          A Not that I'm aware of.</p>	<p style="text-align: right;">Page 48</p> <p>1   ruling requires us to give, and that's it.      2           Now, if you're asking me -- and I've      3   represented the bank for twenty-five years -- is there      4   a book that says call a default if this, this, and      5   that occurs, offset a line of credit if this occurs, I      6   have never heard of such a thing, and I'm not simply      7   going to go through a scouring of an eighteen billion      8   dollar institution to see if there is any such      9   unrelated material.      10         MR. SWICHAR: Well, point one, you      11   mentioned there is a computerized loan policy.      12         MR. GEBHARDT: Loan policy manual.      13         MR. SWICHAR: Loan policy manual.      14          And if, in fact, it deals with any of      15   the areas that I am now requesting anew, for the first      16   time, would you provide -- would you let me know?      17         MR. GEBHARDT: You have -- that was      18   asked and that was argued in front of Judge Rambo.      19         MR. SWICHAR: Your answer is no?      20         MR. GEBHARDT: My answer is it has been      21   ruled upon by the Court, and I'm not going to waive</p>

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<p style="text-align: right;">Page 49</p> <p>1 the benefit of, or assume obligations beyond what that      2 ruling was.      3 MR. SWICHAR: I understand.      4 So your answer is no.      5 Would you also refuse to provide me an      6 index to that computerized manual so that I can      7 determine for myself what areas or what chapters might      8 be relevant in this case?      9 All subject to an appropriate      10 confidentiality agreement.      11 MR. GEBHARDT: I am not producing      12 anything beyond what Judge Rambo's ruling required the      13 bank to produce after argument on a discovery dispute.      14 Q (By Mr. Swichar) Mr. Schwartz, let's go back      15 to you.      16 Is there --      17 MR. GEBHARDT: Also enhanced by the      18 irrelevancy as to any subject matter -- excuse me --      19 as to any claim or defense in this case, which is what      20 we argued in front of Judge Rambo, and certainly      21 applies to the request that you have right now.</p>	<p style="text-align: right;">Page 51</p> <p>1 the document.      2 There's an issue whether those markings      3 do or do not change anything in the document.      4 Q (By Mr. Swichar) For example, Mr. Schwartz,      5 Paragraph 9 is stricken, Paragraph 11 has various      6 strikeouts that are stricken and initialed in the      7 margin.      8 Do you have any idea how those items came      9 about?      10 A It appears as if Sheri Phillips, who worked      11 for CCI, scratched those out -- made the changes.      12 Q Did someone at the bank approve those      13 changes?      14 A There's no acknowledgment along with her      15 initials.      16 Q Do you have a -- would you have been      17 involved?      18 Do you recall meeting with Sheri Phillips      19 and discussing those changes or seeing those changes      20 come about?      21 A I don't recall.</p>
<p style="text-align: right;">Page 50</p> <p>1 Q Mr. Schwartz, are there any computerized      2 records or a manual that would cover a situation where      3 a bank finances accounts receivable and/or work in      4 progress of a borrower?      5 A Not that I'm aware of.      6 Q Okay.      7 MR. SWICHAR: Same request; same      8 denial, I assume.      9 Q (By Mr. Swichar) Would you take a look at      10 the four million dollar note, Exhibit A?      11 Exhibit A, the four million dollar note, is      12 a bank form; is that correct?      13 A Yes.      14 Q Do you know how the changes reflected by      15 scratchouts and initials, et cetera, came about?      16 MR. GEBHARDT: Note an objection for      17 the record because I don't know that the scratchouts      18 reflect changes. They reflect markings put on the --      19 MR. SWICHAR: They're changes to the      20 document.      21 MR. GEBHARDT: There are markings on</p>	<p style="text-align: right;">Page 52</p> <p>1 Q You have no recollection as to how those      2 items came about?      3 A Not specifically.      4 Q Okay. Is it fair to say that the four      5 million dollar note, Exhibit A, was signed by the bank      6 with the changes noted?      7 MR. GEBHARDT: Objection.      8 There's no signature of the bank on      9 this document.      10 Q Is there a four million dollar note signed      11 by the -- approved by the -- is this the four million      12 dollar note approved by the bank?      13 A This is --      14 MR. GEBHARDT: Object to the word      15 approved.      16 A Am I to answer?      17 Q Go ahead.      18 A This is a result of the approval of the bank      19 of the four million dollar line of credit.      20 Q So the bank, therefore, approved this note      21 in the form attached as Exhibit A to the Complaint?</p>

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<p style="text-align: right;">Page 53</p> <p>1 A I wouldn't agree to that.      2 Q Why not?      3 A There's no acknowledgment by anybody from      4 the bank on this note of any of the changes.      5 Q Okay. So you're saying that the changes on      6 Exhibit A were not approved by the bank?      7 A Yes.      8 Q Were you -- but you were not involved in      9 seeing the scratchouts or any discussions being made      10 when --      11 A Not to my recollection.      12 Q -- the note was executed?      13 A Not to my recollection.      14 Q What is your recollection about this      15 particular note, the four million dollar note?      16 Do you remember someone coming from CCI and      17 signing it?      18 As the point man, the relationship officer,      19 wasn't it in your possession when it was signed?      20 A I don't recall.      21 Q You don't recall any circumstances of the</p>	<p style="text-align: right;">Page 55</p> <p>1 realize it was a few years ago -- do you have a      2 recollection how that note came about?      3 A Yes.      4 Q Tell me, please.      5 A What would you like to know?      6 Q I'd like to know how it came about.      7 Did someone come to you and ask for more      8 money? Did it fly out of the sky? What happened?      9 A This is the result of an approval from a      10 request from CCI for a million two.      11 Q Who requested it?      12 What were the circumstances?      13 Did someone come into your office and say I      14 need money, here's what I need and here's why I need      15 it and here's my financials, or did someone just call      16 and say I need 1.2 and you mailed them this note?      17 What happened?      18 MR. GEBHARDT: Objection to form.      19 Q You know what I'm talking about,      20 Mr. Schwartz.      21 A One question at a time and I'll answer it.</p>
<p style="text-align: right;">Page 54</p> <p>1 signing of this note?      2 A No, I don't.      3 Q The granting of a four million dollar loan      4 facility in 1999, you have no recollection of that?      5 MR. GEBHARDT: Objection.      6 Q I'll reword the question.      7 The granting of a four million dollar loan      8 facility in 1999 by way of this note and the signing      9 of this note, you have no recollection of the      10 circumstances of the signing of this note?      11 A I have no recollection of the signing of      12 this note.      13 Q Or the circumstances of the note?      14 A Define circumstances.      15 Q Someone sitting down and signing it.      16 A I do not recall if I was present or not when      17 this note was signed.      18 Q Okay. Let's go to the 1.2 million dollar      19 note, which is Exhibit B of the Complaint, the      20 Complaint being Exhibit Schwartz 2.      21 Can you -- do you have a recollection -- I</p>	<p style="text-align: right;">Page 56</p> <p>1 Q Well, I'm trying to give you examples of the      2 information I'm looking for.      3 How did this note come about?      4 A There was a request made from CCI of      5 additional funds.      6 Q By whom?      7 A Either Sheri Phillips or Mr. Ortenzio.      8 Q Do you recall specifically which person?      9 A No, specifically.      10 Q And do you recall either of those persons      11 telling you why they required the 1.2 million      12 dollar --      13 A Yes.      14 Q -- advance or facility?      15 What did that person tell you?      16 A There was a current cash flow shortage of      17 the company, and additional funds were required to      18 continue operation.      19 Q You don't remember who told you that?      20 A I believe it was in a meeting, and      21 Mr. Ortenzio and Sheri Phillips were both there.</p>

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<p style="text-align: right;">Page 57</p> <p>1 Q Was there any discussion whether this was 2 going to be a short-term or a long-term facility? 3 A Short-term, I believe. 4 Q What is short-term in relation to long-term? 5 Make sure we're on the same wavelength. 6 A Short-term would be less than a year. 7 Q Okay. Were any documents presented to you 8 by CCI in connection with your granting the 1.2 9 million dollar loan facility? 10 A Yes, I believe they were. 11 Q What documents were provided to you and 12 relied upon? 13 A I don't specifically recall exactly what 14 documents were, were given. 15 Q No -- no general idea as to what documents 16 were provided? 17 A Financial statements, current financial 18 statements of the customer. 19 There may have been others. 20 Q Do you recall that, or are you just assuming 21 it?</p>	<p style="text-align: right;">Page 59</p> <p>1 I'm sorry -- Schwartz, Schwartz 4 -- I just have a 2 question on Schwartz 3. 3 Let me show you Schwartz 3. Let me know 4 when you are finished looking at it. 5 (Witness reading.) 6 Q I have a very simple question, Mr. Schwartz. 7 If you want to read the whole thing, feel free to. 8 (Witness reading.) 9 A Okay. 10 Q Based on the documents that have been 11 produced, that have been produced by the bank, 12 Schwartz 3 appears to be the latest cash management 13 agreement that was signed by CCI. 14 Do you have any reason to state otherwise? 15 MR. GEBHARDT: Objection. 16 I think that misstates the record. If 17 you look at the note that's in the Complaint on 18 Exhibit -- which is Exhibit A to the Complaint, you'll 19 see a description of the cash management system in 20 effect with that, and that's six years, or five years 21 after this note.</p>
<p style="text-align: right;">Page 58</p> <p>1 A I can recall that, financial statements. 2 Q Anything else? 3 A No. 4 Q Okay. Is the 1.2 million dollar note a bank 5 form? 6 A Yes. 7 Q You'll notice that there are, again, some 8 certain strikeouts, for example, at the bottom of the 9 first page, and there are some inserts in the first 10 and third paragraphs of Page 2. 11 Do you recall how they came about, sir? 12 A There was some question by Mr. Ortenzio 13 that -- apparently, he didn't like the language in the 14 notes. 15 Q And who approved the changes? 16 A I did. 17 Q You did? 18 A Yes. 19 Q Did you need authority of anyone? 20 A I should have had authority, yes. 21 Q Okay. Why don't you look at Schwartz 3 --</p>	<p style="text-align: right;">Page 60</p> <p>1 MR. SWICHAR: Okay. 2 Q (By Mr. Swichar) This, then, appears to be 3 the original cash management note, except this may be 4 modified or superseded by anything in any of the notes 5 signed by CCI; is that correct? 6 MR. SWICHAR: I appreciate your 7 correction. 8 A Yes. 9 Q (By Mr. Swichar) Okay. I show you what's 10 been marked for identification as Exhibit Schwartz 4. 11 Take a minute and look at it. 12 (Witness reading.) 13 A Okay. 14 Q Now, according to the last page, this -- 15 this Exhibit S-4 reflects that the 1.2 million dollar 16 note was approved not only by you but by 17 Messrs. Myers and Zarcone; is that correct? 18 A That's correct. 19 Q So you did have some approval authority 20 along with the others? 21 A No, I signed this because I have to.</p>

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<p style="text-align: right;">Page 61</p> <p>1 Q Okay, but you -- but you were not involved 2 in the approval, then? You couldn't have been? 3 A I did not have the authority to say yes or 4 no. 5 This could have been approved without my 6 signature. 7 Q Okay. Now, with respect to the 1.2 million 8 dollar note which, again, if you want to look at it, 9 it's Exhibit B in the Complaint, principal is payable 10 on demand; is that right? 11 A Oh, yes. 12 Q Okay. Was there any restriction -- what is 13 your understanding insofar as there being or not being 14 any restriction on the note as to when the note could 15 be prepaid by CCI? 16 Could the note be prepaid by CCI anytime 17 prior to the demand? 18 A Yes. 19 Q Okay. The bank -- so CCI didn't have to 20 wait for the demand; it could just prepay it at any 21 time if it wanted to, had the funds?</p>	<p style="text-align: right;">Page 63</p> <p>1 private sources; is that correct? 2 A Yes. 3 Q Did CCI ever obtain an additional five 4 hundred thousand, if you know, from private sources? 5 A I do not know. 6 Q Was it monitored in any way by the bank as 7 to whether or not there was an additional five hundred 8 thousand obtained by CCI? 9 A No, it was not. 10 Q The memo then goes on to say that this 11 should be sufficient to meet their current cash flow 12 shortage. 13 Tell me what you mean by that from the 14 banker's perspective. 15 A I must have received documents showing what 16 their cash flow position was going to be over the next 17 couple months and determined by that that this should 18 get them over the hurdle. 19 Q How was this note to be repaid? 20 A Profits. 21 Q Is that your answer?</p>
<p style="text-align: right;">Page 62</p> <p>1 A Yes. 2 Q Okay. Was there any restriction with 3 respect to the 1.2 million dollar note as to the 4 source of funds that could be used to repay the note? 5 A The note should have been repaid -- okay, 6 ask the question -- what was the question? 7 Q Is there any restriction in the note in 8 regard to the source of funds that could be used to 9 repay the note? 10 A Not in the note. 11 Q I understand, I'm only sticking to the note. 12 A Not in the note. 13 Q Okay. Now, we'll come back to that because 14 I know you're anxious to say something. 15 Let's look at Schwartz 5. 16 This Schwartz 5, this is your memo; is that 17 correct? 18 A Yes. 19 Q And it says that we decided that an increase 20 of 1.2 million will be done on a temporary basis and 21 CCI will get an additional five hundred thousand from</p>	<p style="text-align: right;">Page 64</p> <p>1 MR. GEBHARDT: Is there a question? 2 MR. SWICHAR: Yeah. 3 I asked is that your answer, profits? 4 MR. GEBHARDT: He's answered. 5 MR. SWICHAR: Well, he's thinking -- 6 he's mulling it over, I think, but if you want, I'll 7 accept it. 8 I'm just giving him a second chance 9 because I can see he wants to say more. 10 Q (By Mr. Swichar) If profits is your answer, 11 fine. 12 A Well, this would have been repaid -- yeah. 13 Q From profits? 14 A (Nodding head affirmatively.) 15 Q Is that right? 16 A Umh-humh, abundance of cash and -- okay, 17 profits and abundance of cash flow. 18 Q Okay. Abundance of cash flow means from 19 excess cash flow from excess, not used to pay 20 expenses? 21 A And any other debt.</p>

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<p style="text-align: right;">Page 65</p> <p>1 Q Okay. Where was cash flow to be deposited 2 at the bank?</p> <p>3 A Cash flow could have been deposited -- they 4 could have deposited it anywhere they wanted to, 5 didn't necessarily have to be at the bank.</p> <p>6 Q Well, there are loan documents that say all 7 business deposits are to be deposited in the checking 8 account --</p> <p>9 A Okay.</p> <p>10 Q -- is that correct?</p> <p>11 A I don't know.</p> <p>12 Q Well, we can review that, but there are 13 documents --</p> <p>14 MR. GEBHARDT: Maybe you'd like to 15 point out where it says --</p> <p>16 MR. SWICHAR: Sure.</p> <p>17 MR. GEBHARDT: -- that it has to be 18 deposited in the checking account.</p> <p>19 MR. SWICHAR: It says primary deposits 20 will be deposited in the bank.</p> <p>21 MR. GEBHARDT: Primary is not --</p>	<p style="text-align: right;">Page 67</p> <p>1 Q (By Mr. Swichar) Where were the bank's 2 profits to be deposited, as far as you're concerned?</p> <p>3 MR. GEBHARDT: The bank's profits?</p> <p>4 A The bank's?</p> <p>5 Q CCI's profits, to be deposited, as far as 6 you're concerned.</p> <p>7 A In their deposit account.</p> <p>8 Q Okay. And where was revenues from cash flow 9 to be deposited from CCI?</p> <p>10 In the bank's checking account as well?</p> <p>11 A Yes.</p> <p>12 Q Okay. Did you ever have any specific 13 discussions, if you recall, with Mr. Ortenzio as to 14 when and how the 1.2 million dollar note would be 15 repaid?</p> <p>16 A I believe there was a letter indicating when 17 it had to be paid by.</p> <p>18 Q Okay. Anything else?</p> <p>19 A Not that I can recall.</p> <p>20 Q I think we're going to come to the letter. 21 I think there's a commitment letter, we'll come to</p>
<p style="text-align: right;">Page 66</p> <p>1 MR. SWICHAR: I know.</p> <p>2 MR. GEBHARDT: The word primary doesn't 3 mean exclusive, and I understand what was done and how 4 it was done and it said primary, but you're 5 interpreting -- you made a representation that the 6 bank's documents said they couldn't have an account 7 anywhere but the bank, and I don't think there's 8 anything that says that.</p> <p>9 MR. SWICHAR: Well, let's find the 10 exact language so there's no confusion about that.</p> <p>11 Do you know off the top of your head 12 where it is?</p> <p>13 MR. GEBHARDT: No, but I'm sure it says 14 primary, not exclusive.</p> <p>15 MR. SWICHAR: Okay. It says the 16 primary business deposits will be deposited in the 17 bank's checking account; is that fair, Mr. Gebhardt?</p> <p>18 MR. GEBHARDT: I think they've 19 indicated that the primary accounts for CCI shall be 20 maintained at the bank.</p> <p>21 MR. SWICHAR: Okay.</p>	<p style="text-align: right;">Page 68</p> <p>1 that.</p> <p>2 Did you ever monitor CCI's use of the 3 1.2 million dollar loan funds?</p> <p>4 A No.</p> <p>5 Q I show you what has been marked for 6 identification as Exhibit Schwartz 6.</p> <p>7 A Okay.</p> <p>8 Q Do you recall how this document came about?</p> <p>9 Was it prepared by you?</p> <p>10 A Yes.</p> <p>11 Q How did it come about?</p> <p>12 Why was this document prepared?</p> <p>13 A This was a result of a meeting with CCI, 14 that they were going to need additional funds because 15 of cash flow shortages.</p> <p>16 Q Was this -- was this S-6 preceded by the 17 1.2 million dollar note, which is dated six days 18 later?</p> <p>19 A Yes.</p> <p>20 Q Okay. Was it initially contemplated by the 21 bank that the four million dollar line of credit would</p>

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<p style="text-align: right;">Page 69</p> <p>1 be increased to five million as reflected on S-6?</p> <p>2 A Yes.</p> <p>3 Q Okay. What caused the bank to contemplate</p> <p>4 that in contrast to what ultimately occurred?</p> <p>5 A Mr. Ortenzio's objection to the surety.</p> <p>6 Q Okay. So correct me if I'm wrong, the bank</p> <p>7 initially contemplated increasing the four million</p> <p>8 dollar line of credit to a five million dollar line of</p> <p>9 credit, correct?</p> <p>10 A Yes.</p> <p>11 Q And the bank initially requested that</p> <p>12 Mr. Ortenzio guarantee the full five million dollars?</p> <p>13 A Yes.</p> <p>14 Q And that was refused by Mr. Ortenzio?</p> <p>15 A Yes.</p> <p>16 Q And did that require the bank and CCI to go</p> <p>17 back and basically rework the facility to the</p> <p>18 1.2 million dollar loan that it ultimately became?</p> <p>19 A Yes.</p> <p>20 Q Did the bank ever request Mr. Ortenzio at</p> <p>21 any time to guarantee any part of the four million</p>	<p style="text-align: right;">Page 71</p> <p>1 A Not that I recall.</p> <p>2 Q Okay. Did the bank then -- hopefully, we</p> <p>3 understand what I'm saying -- did the bank then ever</p> <p>4 request Mr. Ortenzio to guarantee any part of the four</p> <p>5 million dollar line of credit?</p> <p>6 I used one million as an example. Now I'm</p> <p>7 just forgetting that example.</p> <p>8 Any part of the four million, in any amount.</p> <p>9 A Not that I recall.</p> <p>10 Q Was there any discussion when the</p> <p>11 1.2 million dollar note facility was granted as to</p> <p>12 when it would be paid, when it had to be paid, other</p> <p>13 than on demand?</p> <p>14 A Yes, I believe there was a date that it</p> <p>15 was to be paid by.</p> <p>16 Q That's in the loan commitment?</p> <p>17 A Yes, I believe so.</p> <p>18 Q I'm just curious.</p> <p>19 From a banking procedures point of view, why</p> <p>20 wouldn't that be put in the note itself in contrast</p> <p>21 to -- it has to be paid on a certain date in contrast</p>
<p style="text-align: right;">Page 70</p> <p>1 dollar line in contrast to the four -- in contrast to</p> <p>2 the full four million dollar line reflected on S-6?</p> <p>3 MR. GEBHARDT: I'm going to -- I think</p> <p>4 you've got your --</p> <p>5 MR. SWICHAR: I'll say it differently.</p> <p>6 MR. GEBHARDT: Okay, because I think</p> <p>7 you got the numbers confused.</p> <p>8 MR. SWICHAR: All right.</p> <p>9 Q (By Mr. Swichar) Did the bank ever request</p> <p>10 at any time Mr. Ortenzio to guarantee any part of the</p> <p>11 four million dollar line of credit in contrast to the</p> <p>12 complete four million dollar amount?</p> <p>13 For example --</p> <p>14 MR. GEBHARDT: You mean the four plus</p> <p>15 the one million?</p> <p>16 MR. SWICHAR: No, no. Let's isolate</p> <p>17 the four million dollar line of credit.</p> <p>18 Q (By Mr. Swichar) Did the bank ever say,</p> <p>19 Mr. Ortenzio, we want you to guarantee one million</p> <p>20 dollars worth of the four million dollar line of</p> <p>21 credit?</p>	<p style="text-align: right;">Page 72</p> <p>1 to on demand basis?</p> <p>2 Is that normal procedure to do that?</p> <p>3 A To do --</p> <p>4 Q To have a date in the loan commitment</p> <p>5 letter, a specific date, but whereas the actual note</p> <p>6 would say payable on demand.</p> <p>7 A Yes, that is normal.</p> <p>8 Q Why wouldn't the bank put the date on as the</p> <p>9 outside date -- for example, it's due on April 30th,</p> <p>10 2000 -- or prior thereto on demand?</p> <p>11 A I don't know.</p> <p>12 Q You don't see that in your banking</p> <p>13 experience?</p> <p>14 A See what?</p> <p>15 Q See an outside date coupled with an on</p> <p>16 demand note in the note itself.</p> <p>17 A Those are two -- if it has a date on it,</p> <p>18 they are two different notes.</p> <p>19 Notes are either on demand, or if they are a</p> <p>20 term loan.</p> <p>21 Q Was it ever contemplated that the four</p>

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<p style="text-align: right;">Page 73</p> <p>1 million dollar note would be repaid before the      2 1.2 million dollar note?      3 A It would hope that that four million would      4 be repaid before the 1.2 would be repaid.      5 Q Let's forget hopes.      6 Did the bank provide any documents that were      7 signed that required repayment of the four million      8 before the 1.2 million?      9 A Not specific to that fact.      10 Q How about generally to that fact?      11 A No, no documents.      12 Q Okay. There's no document that require the      13 repayment of the four million prior to the      14 1.2 million, were there?      15 A No.      16 Q And, in fact, the four million dollar line      17 of credit was long-term; is that correct?      18 A No, that is incorrect.      19 Q It was not long-term?      20 A That was on a year-to-year basis.      21 Q Okay, but it went back to at least ten</p>	<p style="text-align: right;">Page 75</p> <p>1 MR. GEBHARDT: The suretyship.      2 Q The suretyship.      3 A I was involved with the signing.      4 MR. SWICHAR: Let's go off the record      5 for a minute.      6 (Discussion off the record.)      7 MR. SWICHAR: Let's take a break, okay?      8 (Thereupon, a recess was taken.)      9 Q (By Mr. Swichar) Let's go back for a moment      10 to S-6, which is your memo of November 2, 1999.      11 I note that when you were contemplating      12 increasing the four million dollar line of credit to      13 four million dollars -- to five million -- the note --      14 you noted on S-6 that the increase would expire on      15 February 28th, 2000.      16 Where did that date come from?      17 A It was the bank's date that we decided      18 upon --      19 Q Okay.      20 A -- how long the increase would be good for.      21 Q Okay, except now -- and we'll come to it in</p>
<p style="text-align: right;">Page 74</p> <p>1 years, didn't it?      2 A It still had to be renewed annually.      3 Q Okay, but there was no reason to think it      4 wouldn't continue to be renewed annually as it had      5 been for the prior ten years or so?      6 A There's always that possibility.      7 Q Okay. The 1.2 million dollar note facility      8 was a temporary facility, wasn't it?      9 A Yes.      10 Q Okay. The four million dollar facility was      11 not deemed to be or considered to be temporary; is      12 that correct?      13 A That's correct.      14 Q Let's look at Exhibit C of the Complaint,      15 which is the Ortenzio guarantee.      16 This is on a bank form dated November 8,      17 1999?      18 A Yes.      19 Q Did you prepare it?      20 Were you involved in the signing and      21 preparation of this note?</p>	<p style="text-align: right;">Page 76</p> <p>1 a minute -- but when I go to Schwartz 8 later, which      2 is your commitment letter, it states that the loan      3 would expire a month later, on March 31, 2000.      4 Do you know how that one-month extension      5 came about?      6 A Could I see that?      7 Q Yeah, I'll show that to you now; I'm sorry,      8 I should have done that.      9 (Document was handed to the witness.)      10 Q Do you see that there?      11 A Well, this is for the million two.      12 Q Yes.      13 A This has nothing to do with the line.      14 Q No, I understand, but if you look at S-6,      15 which dealt with the ultimate increase, correct, in      16 the facility?      17 Let me take it by the numbers.      18 S-6 reflects the bank's initial      19 contemplation of increasing the line from four to five      20 million and to be fully guaranteed by Mr. Ortenzio and      21 to expire on February 28, 2000, correct?</p>

19 (Pages 73 to 76)

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<p style="text-align: right;">Page 77</p> <p>1 A Yes.</p> <p>2 Q But ultimately what happened was there was a 3 1.2 million dollar new note guaranteed by 4 Mr. Ortenzio, but the expiration date as reflected in 5 S-8 was a month later.</p> <p>6 So how did it go from February 28th to 7 March 31st is my question.</p> <p>8 A I don't recall the specifics.</p> <p>9 Q How about the generalities?</p> <p>10 A I don't recall the generalities, either.</p> <p>11 Q You understand whenever you answer a 12 question you don't recall the specifics, I've got to to 13 come back and ask you how about generalities?</p> <p>14 A Yes.</p> <p>15 Q Okay, but you have no recollection 16 specifically or generally as to that one-month 17 extension?</p> <p>18 A That is correct.</p> <p>19 Q Okay. All right, now -- you can hold on 20 that. We'll come back to it later.</p> <p>21 I'm going to show you Exhibit Schwartz 7,</p>	<p style="text-align: right;">Page 79</p> <p>1 A Yes.</p> <p>2 QOkay. Tell me from a banker's perspective, 3 if you turn to Page 2, there's an asterisk in the 4 second paragraph, then it goes on to say under the 5 twelve -- 1.2 million dollar commercial loan note.</p> <p>6 What does that change reflect from your 7 perspective?</p> <p>8 AThat the surety applies to the million two 9 note.</p> <p>10 QAnd it doesn't apply to any other liability 11 of CCI?</p> <p>12 AThat appears to be correct.</p> <p>13 QOkay. So the initial form, if signed by 14 Mr. Ortenzio, would have been a guarantee of not only 15 the 1.2 million, but of the four million as well as 16 any other loan facility; is that correct?</p> <p>17 AYes.</p> <p>18 QAnd the 1.2 million dollar note was 19 modified -- guarantee -- was modified, or a suretyship 20 was modified to make it understood that the guarantee 21 would only extend to the 1.2 million dollar facility;</p>
<p style="text-align: right;">Page 78</p> <p>1 which is the equipment note of November 20, 1998, for 2 two million dollars.</p> <p>3 Were you involved in the preparation and 4 execution of this?</p> <p>5 A The execution.</p> <p>6 Q Yes.</p> <p>7 Were you?</p> <p>8 A Only the execution.</p> <p>9 Q Okay, I want to come back to that. I forgot 10 to ask you -- let's go back to the guarantee, which is 11 going to be Exhibit C of the Complaint.</p> <p>12 Do you have that in front of you?</p> <p>13 There are changes on that; is that correct?</p> <p>14 A Yes.</p> <p>15 Q How did those changes come about, if you 16 recall?</p> <p>17 A I don't recall how they actually came about.</p> <p>18 Q Do you recall their being requested by 19 Mr. Ortenzio or Sheri Phillips?</p> <p>20 A By Mr. Ortenzio, yes.</p> <p>21 Q And did you approve the changes?</p>	<p style="text-align: right;">Page 80</p> <p>1 is that correct?</p> <p>2 A Yes.</p> <p>3 Q Okay. All right, let's go back to the 4 equipment note.</p> <p>5 You were present at the signing of that?</p> <p>6 A Yes, I was.</p> <p>7 Q Were interest payments made on the equipment 8 note monthly?</p> <p>9 A Along with principal, yes.</p> <p>10 Q And principal payments were made on a 11 monthly basis on account of the equipment note; is 12 that correct?</p> <p>13 A Monthly principal payments were made on the 14 equipment note.</p> <p>15 Q Okay. It's my understanding up to February, 16 2000, or so the balance on the two million dollar 17 equipment note was down to about 1.2 million in 18 principal.</p> <p>19 Does that sound correct?</p> <p>20 Do you have any reason to doubt that?</p> <p>21 That's what I read from the note -- loan documents.</p>

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<p style="text-align: right;">Page 81</p> <p>1 A Okay.</p> <p>2 Q Okay. You don't have any reason to doubt 3 that?</p> <p>4 A No.</p> <p>5 Q Okay. How -- how were those payments on 6 account of the equipment note, the principal or 7 interest, repaid?</p> <p>8 What was the mechanism for that?</p> <p>9 A I'm not sure I totally understand the 10 question.</p> <p>11 Q Well, there were repayments monthly, both 12 interest and principal, on the equipment note?</p> <p>13 A Umh-humh.</p> <p>14 Q How were they done?</p> <p>15 Did Mr. Ortenzio come in with a bucket of 16 cash? How did it -- how was it accomplished?</p> <p>17 A By check, as far as I can recall.</p> <p>18 Q Are you sure about that?</p> <p>19 A Not one hundred percent.</p> <p>20 Q Well, how would I know that?</p> <p>21 A There -- there would be two methods to repay</p>	<p style="text-align: right;">Page 83</p> <p>1 A If they were an automatic payment, there 2 would -- there was a document that --</p> <p>3 Q Aren't automatic payments reflected on that?</p> <p>4 A No, not automatic payments.</p> <p>5 Q Are payments reflected?</p> <p>6 A Payments are reflected.</p> <p>7 Q And how are they reflected?</p> <p>8 A Just as a reduction of principal.</p> <p>9 Q Okay. And is it done on the same time each 10 month, approximately, same amount each month, on 11 principal, approximately?</p> <p>12 Does that help you out?</p> <p>13 A It doesn't appear as if the payments were 14 taken automatically by the bank.</p> <p>15 Q Why do you say that?</p> <p>16 A Because they occur on different dates.</p> <p>17 If they were taken by the bank, it would be 18 the same day every month.</p> <p>19 Q Interest, also?</p> <p>20 Were there separate checks for interest 21 payments, or were they automatically debited?</p>
<p style="text-align: right;">Page 82</p> <p>1 it.</p> <p>2 Either we would automatically take the money 3 out of the account because of an agreement that was 4 prior, or they would pay us by check.</p> <p>5 Q Was it done either way?</p> <p>6 A No.</p> <p>7 Q There's a document that your attorney 8 provided me just yesterday, or last week actually, 9 which are a printout of the computer screens for the 10 Allfirst CCI loans.</p> <p>11 Would this -- looking at this document, 12 would this help you answer that question as to how the 13 repayments on the equipment note were made?</p> <p>14 (Document was handed to the witness.)</p> <p>15 A No.</p> <p>16 Q It doesn't help you answer the question?</p> <p>17 A No.</p> <p>18 Q Well, how would I know, other than asking 19 Mr. Ortenzio how he made payments on the equipment 20 note, including interest and principal, whether they 21 were by check or sweeps from the checking account?</p>	<p style="text-align: right;">Page 84</p> <p>1 A Ask the question again.</p> <p>2 Q How were interest payments made?</p> <p>3 Debited from the checking account on an 4 automatic basis or --</p> <p>5 A To which loan are we talking?</p> <p>6 Q The equipment note.</p> <p>7 A It appears principal and interest payments 8 were made by check.</p> <p>9 Q Because of the different dates?</p> <p>10 A Yes.</p> <p>11 Q If Mr. Ortenzio were to tell you that there 12 were automatic debits and not checks, would you say 13 that's not true, or is it possibly true?</p> <p>14 You know what, Mr. Schwartz? If you don't 15 know, you don't know, and at the end of the day, it 16 doesn't matter.</p> <p>17 A It's going to take some time to determine 18 that for sure.</p> <p>19 Q Okay, let's put this aside.</p> <p>20 The checks as you think occurred were 21 written to make payment on the equipment note,</p>

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<p style="text-align: right;">Page 85</p> <p>1 principal or interest, that would be from the checking 2 account, right?</p> <p>3 That -- CCI's checking account at the bank?</p> <p>4 A Yes.</p> <p>5 Q Okay. And that -- it's the same checking 6 account that was tied into the cash management 7 facility and the four million dollar line of credit?</p> <p>8 A I would think so.</p> <p>9 Q All right. So if CCI made a repayment on 10 account of the equipment note, principal or interest, 11 that would have the impact of drawing down on the line 12 of credit, wouldn't it?</p> <p>13 A Possibly.</p> <p>14 Q Possibly?</p> <p>15 You mean sometimes it's possible, sometimes 16 it's not, depending on when it's hit, or what?</p> <p>17 A No, you are correct; it would have the 18 impact of drawing down the line of credit, yes.</p> <p>19 Q Okay. And it would reduce availability on 20 the line of credit; is that correct?</p> <p>21 A Yes, that's correct.</p>	<p style="text-align: right;">Page 87</p> <p>1 front of you.</p> <p>2 MR. GEBHARDT: Do I have that?</p> <p>3 MR. SWICHAR: Oh, I'm sorry; no, I 4 don't think you do.</p> <p>5 (Document was handed to counsel.)</p> <p>6 Q (By Mr. Swichar) This basically -- is S-8 7 basically the commitment letter for the 1.2 million?</p> <p>8 A Yes.</p> <p>9 Q Now, the 1.2 million was fully advanced at 10 its inception?</p> <p>11 A Yes.</p> <p>12 Q Okay. And was it deposited to CCI's 13 checking account at Allfirst Bank?</p> <p>14 A Yes.</p> <p>15 Q Okay. And when the 1.2 million was 16 deposited in CCI's checking account, again, that's the 17 same checking account that's tied in to the cash 18 management facility and the four million dollar line 19 of credit; is that correct?</p> <p>20 A Yes.</p> <p>21 Q Okay. Now, when the 1.2 million dollar line</p>
<p style="text-align: right;">Page 86</p> <p>1 Q Okay. So when payments were made on the 2 equipment note to the bank by CCI, it would draw the 3 line of credit and reduce availability, right?</p> <p>4 A Each month.</p> <p>5 Q Each month.</p> <p>6 Am I right?</p> <p>7 A Yes.</p> <p>8 Q Okay. Now, interest on the 1.2 million 9 dollar note was paid monthly; is that correct?</p> <p>10 A Yes.</p> <p>11 Q And that was tied in to the cash management 12 facility as well; is that correct?</p> <p>13 A What do you mean tied in?</p> <p>14 Q Well, when interest payments were paid to 15 the bank on the 1.2 million dollar note, that had the 16 same impact as payments on the equipment note had; 17 namely, it would be a draw on the four million dollar 18 line of credit.</p> <p>19 Is that correct?</p> <p>20 A Yes.</p> <p>21 Q Okay. Look now at S-8 which you have in</p>	<p style="text-align: right;">Page 88</p> <p>1 of -- when the 1.2 million dollar loan was deposited 2 into CCI's checking account, that would have increased 3 the borrowing capacity on the four million dollar line 4 of credit; is that correct?</p> <p>5 A It would have the effect of paying any 6 principal outstanding back on the four million dollar 7 facility.</p> <p>8 Q Okay. So put another way, when the 1.2 9 million dollar deposit was made in the CCI bank 10 account that was tied in to the four million dollar 11 line of credit, it would have had the effect of 12 decreasing the loan balance owed on the four million 13 dollar line of credit by 1.2 million dollars?</p> <p>14 A Yes.</p> <p>15 Q Okay. Let me show you what has been marked 16 for identification as Exhibit Schwartz 9, the document 17 that was furnished by the bank.</p> <p>18 Do you know whose handwriting is at the 19 bottom of S-9, whose notes?</p> <p>20 A No, I do not.</p> <p>21 Q Okay. Is this a type of document that</p>

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<p style="text-align: right;">Page 89</p> <p>1 you've seen before today?</p> <p>2 A I've seen this.</p> <p>3 Q When did you first see it?</p> <p>4 A Oh, this particular document?</p> <p>5 Q Yes.</p> <p>6 Well, is this part of the document that you 7 would have reviewed in connection with your review of 8 the cash management facility at the bank?</p> <p>9 This would reflect activity on a particular 10 day or days?</p> <p>11 A This is the transaction history on the line 12 of credit.</p> <p>13 Q For the day that the 1.2 million dollar was 14 repaid, February 11th?</p> <p>15 I'll represent to you that these are the 16 bank's notes on this exhibit. They're not mine or 17 anyone else's that I know.</p> <p>18 A No, I'm -- I -- if part -- if the million 19 two is part of this million three, that occurred, yes.</p> <p>20 Q Well, consistent with Answers to 21 Interrogatories, it would appear to me that CCI repaid</p>	<p style="text-align: right;">Page 91</p> <p>1 four million dollar line was two point -- two and a 2 half -- two million five hundred and thirty-four 3 thousand one hundred fifty-four dollars and 4 eighty-four cents; is that correct?</p> <p>5 A Yes.</p> <p>6 Q Okay. Now, this is basically the same way 7 it would work with the equipment note, is that 8 correct, the same type procedure, the same type of 9 printout?</p> <p>10 MR. GEBHARDT: Objection.</p> <p>11 Q The same type of calculations would be made; 12 is that correct?</p> <p>13 MR. GEBHARDT: Wait, wait.</p> <p>14 Q The form.</p> <p>15 MR. GEBHARDT: You've asked about three 16 different questions using different terms that -- I 17 mean, a printout is a printout, and you're talking 18 about procedures and what was done and what's 19 reflected on the printout.</p> <p>20 MR. SWICHAR: That's fair. I'll 21 rephrase the question.</p>
<p style="text-align: right;">Page 90</p> <p>1 the 1.2 million dollar note on February 11th, 2000.</p> <p>2 Is that consistent with the document?</p> <p>3 A Yes.</p> <p>4 Q And it would reflect that the repayment 5 increased the balance on the four million dollar line 6 of credit by 1.2 million, is that correct, plus 7 interest that was owed somewhere?</p> <p>8 A Yes.</p> <p>9 Q And on February 10th, one million two 10 hundred and thirty-two thousand three hundred and 11 twenty-eight dollars was owed on the four million 12 dollar line of credit; is that correct?</p> <p>13 A Yes.</p> <p>14 Q And after the 1.2 million dollar note was 15 paid, the loan balance on the four million dollar line 16 increased by one million three hundred and one 17 thousand eight hundred and twenty-six dollars; is that 18 correct?</p> <p>19 A Yes.</p> <p>20 Q And the total loan balance after the sweep, 21 after the 1.2 million dollar loan was repaid, on the</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. GEBHARDT: Yeah, just rephrase it.</p> <p>2 MR. SWICHAR: It's a confusing 3 question. I didn't mean to do that.</p> <p>4 Maybe I can't answer the question -- I 5 can't ask the question the right way, but I'll try.</p> <p>6 Q (By Mr. Swichar) When the 1.2 -- when the 7 payments were made on the one point -- on the two 8 million dollar equipment note, whether they be 9 principal or interest, would similar-type calculations 10 be computerized as we see with respect to S-9?</p> <p>11 Did that question make sense?</p> <p>12 There were no objections, so maybe it did.</p> <p>13 MR. GEBHARDT: Not necessarily, but -- 14 still struggle with it.</p> <p>15 Q In other words, sir --</p> <p>16 A I don't know --</p> <p>17 Q I'll rephrase -- go ahead.</p> <p>18 Are you able to answer the question?</p> <p>19 A No, I'll hear what you have to say.</p> <p>20 Q Okay. If I wanted to see what happened on a 21 certain date, if a particular payment was made on</p>

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<p style="text-align: right;">Page 93</p> <p>1 account of the equipment note, would I punch up a 2 similar-type document from the same computer program? 3 A I don't think you'd be able to tell if an 4 equipment payment was made by looking at this. 5 Q This being S-9? 6 A Yes. 7 Q If I wanted to know what the particular 8 balance was or a particular payment was made on the 9 one -- on the two million dollar equipment note, on 10 the two million dollar equipment note, what document 11 would the bank have to retrieve to tell me that? 12 A I would look at their checking account 13 statement. 14 Q Yes. 15 A Yes. 16 Q And what would that show? 17 A That would show the check written for the 18 equipment line. 19 Q Well, suppose there was a -- there was a 20 check written and deposited in the CCI account, 21 correct?</p>	<p style="text-align: right;">Page 95</p> <p>1 particular deposit was credited to the equipment note? 2 MR. GEBHARDT: I object to that. 3 A A deposit or a payment? 4 Q A payment. 5 A How would -- 6 Q How would I know on a particular day I had 7 on deposit X dollars in my checking account of which Y 8 dollars was utilized as a payment towards the 9 equipment note? 10 And if I asked the bank for a document 11 showing me that, would the bank be able to produce 12 such a document that would show me that? 13 Because the checking account statement 14 wouldn't show that. 15 MR. GEBHARDT: Objection. 16 Are you asking, or are you testifying? 17 MR. SWICHAR: I'm asking. 18 Q (By Mr. Swichar) Do you understand the 19 question? 20 A No. 21 Q No, okay.</p>
<p style="text-align: right;">Page 94</p> <p>1 The check would have to be deposited first, 2 right? 3 MR. GEBHARDT: Wait a minute. 4 You're -- CCI is writing the check and 5 depositing -- 6 Q CCI is depositing a check into its checking 7 account, right? Let's assume. 8 The next step would be for the bank to sweep 9 that check on account of a credit to the equipment 10 note; is that correct? 11 A I'm confused. 12 Q How -- how would -- how would I know that 13 the bank took a particular deposit from me as CCI and 14 credited it towards the equipment note? 15 What document would you have to reflect 16 that? 17 Because your -- the checking account 18 wouldn't tell me what happened to that deposit. The 19 checking account statement wouldn't tell me what 20 happened to that deposit. 21 How would I know that on a particular day a</p>	<p style="text-align: right;">Page 96</p> <p>1 I put money into my CCI checking account. 2 At the end of the month, I get a statement, correct? 3 A Yes. 4 Q Would that statement show me that certain 5 deposits had been allocated on account of the payment 6 of the equipment note? 7 A No. 8 Q Okay. How would I know when -- if that has 9 been done? 10 How would I know that a certain deposit was 11 allocated as a credit towards the equipment note? 12 What document would I have, or what would I 13 request to see that? 14 A A deposit -- 15 MR. GEBHARDT: Let me put an objection 16 on the record, and you can step out so I'm not accused 17 of coaching the witness. 18 (The witness left the conference room.) 19 MR. SWICHAR: You want this on the 20 record? 21 MR. GEBHARDT: Yeah.</p>

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<p style="text-align: right;">Page 97</p> <p>1           MR. SWICHAR: Okay.</p> <p>2           MR. GEBHARDT: My objection is that you</p> <p>3       are misdescribing to him the function of the line of</p> <p>4       credit.</p> <p>5           Checks would come in, or wire transfers</p> <p>6       would come into the bank. If there was a positive</p> <p>7       balance the aggregate would reflect, and the checks</p> <p>8       that were presented would be paid. If there was a</p> <p>9       negative balance after crediting the checks, there</p> <p>10      would be a draw on the line of credit.</p> <p>11      MR. SWICHAR: Right.</p> <p>12      MR. GEBHARDT: You're suggesting in</p> <p>13     some way that a check may come from a specific</p> <p>14     customer --</p> <p>15      MR. SWICHAR: No, I didn't mean to.</p> <p>16      MR. GEBHARDT: -- of CCI.</p> <p>17      MR. SWICHAR: I didn't mean to.</p> <p>18      MR. GEBHARDT: And then that that</p> <p>19     specific check credit --</p> <p>20      MR. SWICHAR: Larry --</p> <p>21      MR. GEBHARDT: -- would be allocated to</p>	<p style="text-align: right;">Page 99</p> <p>1           MR. SWICHAR: Well, it's a lot easier</p> <p>2       when he's gone.</p> <p>3           (The witness returned to the conference</p> <p>4       room.)</p> <p>5      Q (By Mr. Swichar) Mr. Schwartz, how would I</p> <p>6       know as CCI when and how a particular payment has been</p> <p>7       made on account of the equipment note?</p> <p>8      A Next month's bill --</p> <p>9      Q Okay.</p> <p>10     A -- would show the reduction.</p> <p>11     Q Okay. Now, if I went back to the bank and I</p> <p>12     said, show me your document that reflects that on a</p> <p>13     certain day a payment was made, is there a</p> <p>14     computerized document such as S-9?</p> <p>15     A Yes.</p> <p>16     Q Okay. And would there be a corresponding</p> <p>17     increase on the four million dollar line of credit?</p> <p>18     MR. GEBHARDT: Objection.</p> <p>19     A If that was the only check presented that</p> <p>20     day, yes.</p> <p>21     Q Okay, I don't understand that answer.</p>
<p style="text-align: right;">Page 98</p> <p>1       the equipment note.</p> <p>2      MR. SWICHAR: Larry, I just want to</p> <p>3       know, so you understand, how would a borrower such as</p> <p>4       CCI know that a payment was made on a particular day</p> <p>5       against -- as a credit towards the equipment note.</p> <p>6       The check -- the checking account</p> <p>7       statement wouldn't tell me that.</p> <p>8      MR. GEBHARDT: Well, I don't know if it</p> <p>9       would or wouldn't, but that's a different question.</p> <p>10     You've been asking him about a specific</p> <p>11     deposit --</p> <p>12     MR. SWICHAR: I'll try to ask him the</p> <p>13     right way.</p> <p>14     MR. GEBHARDT: -- and how would we know</p> <p>15     that that deposit got applied --</p> <p>16     MR. SWICHAR: I'll try to --</p> <p>17     MR. GEBHARDT: -- to the payment.</p> <p>18     MR. SWICHAR: I'll broaden it.</p> <p>19     MR. GEBHARDT: Just -- yeah. I mean,</p> <p>20     just ask him like you asked me; how would you know</p> <p>21     when --</p>	<p style="text-align: right;">Page 100</p> <p>1       Would you explain it?</p> <p>2       Let me go back and rephrase it.</p> <p>3       The 1.2 -- I keep saying the 1.2 -- the</p> <p>4       equipment note, principal payments or interest were</p> <p>5       paid, let's assume, by checks, CCI checks; is that</p> <p>6       correct?</p> <p>7      A Yes.</p> <p>8      Q And those checks were deposited in the CCI</p> <p>9       checking account, right?</p> <p>10     The checks were -- the checks were initially</p> <p>11     deposited in the CCI checking account, right?</p> <p>12     A Checks from where?</p> <p>13     Q Checks from -- checks from profit, checks</p> <p>14     from wherever checks come from.</p> <p>15     A Customers?</p> <p>16     Q Customers.</p> <p>17     A Okay.</p> <p>18     Q Those checks would then be deposited in the</p> <p>19     checking account at Allfirst Bank, and payments on --</p> <p>20     and they would be directed to repay the equipment note</p> <p>21     and/or interest on the equipment note, correct?</p>

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<p style="text-align: right;">Page 101</p> <p>1 A No.      2 Q No?      3 A The checks coming in from a customer that      4 CCI is depositing is going to go into their checking      5 account and then be applied to the line.      6 Q Okay. Are you suggesting, then, that when      7 CCI made a repayment on account of the equipment note      8 it was a separate check?      9 A Yes.      10 Q Okay. CCI writes a separate check on      11 account of the equipment note.      12 Does it contact you to take that deposit and      13 apply it?      14 MR. GEBHARDT: Objection.      15 Deposit?      16 Q When CCI takes a check and deposits it in      17 the checking account, how do you know to apply it to      18 the equipment note?      19 A I wouldn't do anything with the deposit.      20 Q Okay. What do you mean you wouldn't do      21 anything with the deposit?</p>	<p style="text-align: right;">Page 103</p> <p>1 A Yes.      2 Q Okay. Do you have any -- does the bank have      3 any document similar to S-9 that would relate to the      4 deposit made by the bank of the initial 1.2 million      5 dollar note proceeds?      6 A Yes.      7 MR. SWICHAR: Can I request that,      8 please?      9 MR. GEBHARDT: You should have it.      10 MR. SWICHAR: I don't have it. I      11 don't.      12 All I have -- off the record.      13 (Discussion off the record.)      14 Q (By Mr. Swichar) Mr. Schwartz, can you tell      15 from that document the entry that deals with the      16 deposit of the 1.2 million in November of '99?      17 A This is going to take some time.      18 MR. GEBHARDT: Let me just say for the      19 record, my understanding is that if the 1.2 million      20 was deposited on November 9, if that's the actual date      21 of the disbursement, if there were other checks that</p>
<p style="text-align: right;">Page 102</p> <p>1 MR. GEBHARDT: I mean, let me pose an      2 objection.      3 You're confusing checks that come from      4 customers that are deposited in the account with      5 checks that CCI might write from its account in      6 payment of some bill.      7 Q Okay. CCI writes a check out of its      8 checking account in payment of -- as a repayment of      9 the equipment note.      10 Does that happen?      11 A Yes.      12 Q Okay. And that bank -- that check is      13 written to the bank, correct?      14 A Yes.      15 Q And it will say on it in repayment of      16 equipment note, correct?      17 A Something to that effect.      18 Q Okay. Now, when that check is presented and      19 paid to the bank, it has the same effect of drawing --      20 it draws a corresponding amount on the four million      21 dollar line of credit?</p>	<p style="text-align: right;">Page 104</p> <p>1 may have come in from CCI's customers, it may be an      2 aggregate at the end of the day deposit, so it      3 wouldn't just say one million two.      4 MR. SWICHAR: I understand.      5 MR. GEBHARDT: It might be a million      6 eight --      7 MR. SWICHAR: Right, right.      8 MR. GEBHARDT: -- three thirty-nine or      9 something.      10 Q (By Mr. Swichar) Can you find November 9 or      11 whereabouts and see if that is reflected on there?      12 A Yes.      13 Q Did you find it there?      14 A Umh-humh.      15 Q Can you just put a little X next to it?      16 (Witness complying.)      17 Q Let me have it back.      18 (Document was handed to counsel.)      19 Q Now, does what you just X'd off reflect the      20 draw of the four million dollar line of credit similar      21 to a situation as in S-9?</p>

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<p style="text-align: right;">Page 105</p> <p>1           MR. GEBHARDT: Wait a minute.      2           You said a draw. Draw means you're      3 taking money out.      4           MR. SWICHAR: Right.      5           MR. GEBHARDT: You're asking him to      6 indicate where money was put in.      7           MR. SWICHAR: I'm sorry, an increase on      8 the four million dollar line of credit, if it      9 increased availability.      10          Does it reflect -- I'll rephrase it.      11          Q (By Mr. Swichar) Does what you just X'd off,      12 a deposit of the 1.2 million on November 9th, reflect      13 the impact on the four million dollar line of credit      14 as we have with respect to S-9?      15          A You can't specifically see the million two.      16          Q I can't.      17          Well, out there in the bank's universe, is      18 there a document similar to S-9 that provides me the      19 same information, the relationship between the 1.2      20 million and the four million dollar line of credit?      21          A I believe you have this right here, but it's</p>	<p style="text-align: right;">Page 107</p> <p>1          A No.      2          Q Well, then, that's not the right day, then,      3 is it?      4          A Yes.      5          Q This doesn't deal with the 1.2 million, does      6 it?      7          A Yes, it does.      8          Q How?      9          Was the -- does it reflect the increase in      10 the availability of the four million dollar line of      11 credit to compensate for the 1.2 million deposit,      12 similar to a document such as S-9?      13          That's what I'm trying to figure out.      14          In other words, on November 9, 2000, when      15 the 1.2 million dollar facility was deposited, what      16 impact did that have on the four million dollar line      17 of credit?      18          Did it go from what to what?      19          A Okay. There was a payment here that was      20 made similarly that the balance went from two million      21 three hundred fifty-three thousand seven hundred</p>
<p style="text-align: right;">Page 106</p> <p>1 what occurred for the day on 11/9. You don't see a      2 million two coming in because checks were presented      3 for payment that were paid that day, also.      4          Q What do you have on November 9th that you      5 feel would be encompassed -- that would encompass the      6 1.2 million?      7          Describe to me the transaction because I      8 can't read bank language.      9          The best of your ability, what occurred on      10 that day?      11          A Well, on that day, we had to advance off the      12 line a hundred and eight thousand dollars.      13          Q Off the four million dollar line?      14          A Yeah, we increased the outstanding on the      15 four point -- on the four million dollar line that      16 day.      17          Q By how much?      18          A One hundred and eight thousand dollars.      19          Q Okay. Where does the 1.2 million come into      20 play?      21          Is there any mention or indication of it?</p>	<p style="text-align: right;">Page 108</p> <p>1 fifty-one dollars to one million one hundred      2 sixty-four thousand eight hundred eighteen dollars on      3 the line of credit.      4          Q On the four million dollar line of credit?      5          A Yes.      6          Q Can you say that again so I listen better      7 this time?      8          On the day the 1.2 million dollar facility      9 was deposited, what happened to the four million      10 dollar line of credit?      11          A The loan balance went from approximately      12 2.3 million to 1.1 million.      13          Q Okay. So the 1.2 million, as we said      14 earlier, reduced the balance on the four million      15 dollar line of credit and increased the availability      16 on the same four million dollar line of credit,      17 correct?      18          MR. GEBHARDT: It depends.      19          Q On the day that the 1.2 million dollar was      20 deposited, it increased the four million dollar line      21 of credit availability by 1.2 million, correct?</p>

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<p style="text-align: right;">Page 109</p> <p>1 A Yes.</p> <p>2 Q And it decreased the balance owed on the 3 four million by the 1.2 million as well?</p> <p>4 Decreased the balance owed.</p> <p>5 A Yes.</p> <p>6 Q Okay. All right, fine, we got there.</p> <p>7 So am I correct, then, that the four million 8 dollar facility, the 1.2 million dollar note, and the 9 two million dollar equipment note were all tied in to 10 a single checking account?</p> <p>11 MR. GEBHARDT: Objection.</p> <p>12 Q You can answer it.</p> <p>13 A I don't know how you're tying loans and 14 checking accounts together.</p> <p>15 Q Well, there was only one checking account 16 where the loans were deposited, and there was only one 17 checking account from which repayments were made.</p> <p>18 MR. GEBHARDT: You don't know --</p> <p>19 A I don't know that.</p> <p>20 MR. GEBHARDT: You haven't established 21 that.</p>	<p style="text-align: right;">Page 111</p> <p>1 Q And where the cash management facility was 2 tied in to the four million dollar line of credit; is 3 that correct?</p> <p>4 A Yes.</p> <p>5 Q Okay, thank you.</p> <p>6 Suppose CCI wanted to make a payment on 7 account of the 1.2 million dollar note. How would it 8 do that?</p> <p>9 How would you expect it to do that?</p> <p>10 A The same way they make a payment on any of 11 their other notes.</p> <p>12 Q Which would be to write a check to the bank, 13 correct?</p> <p>14 A Yes.</p> <p>15 Q Deposit it in the checking account, correct?</p> <p>16 A No.</p> <p>17 Q Well, turn it over to the bank.</p> <p>18 A They would write a check and give it to the 19 bank.</p> <p>20 Q Okay. What would the bank do with it?</p> <p>21 A Process the payment.</p>
<p style="text-align: right;">Page 110</p> <p>1 You don't know where the equipment loan 2 was deposited, or whether it was or wasn't.</p> <p>3 MR. SWICHAR: Well, he has testified -- 4 and correct me if I'm wrong -- I'll go back.</p> <p>5 Q (By Mr. Swichar) The 1.2 -- the two million 6 dollar equipment note, where was that money deposited 7 when it was granted?</p> <p>8 A Into the checking account at All -- at 9 Dauphin Deposit.</p> <p>10 Q Okay. And that's the same checking account 11 that was related to the four million dollar line of 12 credit and the cash management facility?</p> <p>13 A Yes.</p> <p>14 Q Okay. And when the 1.2 million dollar loan 15 was made in November, 2000 -- November, '99, rather -- 16 that was deposited into CCI's checking account at the 17 bank as well?</p> <p>18 A Yes.</p> <p>19 Q And that's the same checking account where 20 the equipment note proceeds were deposited, correct?</p> <p>21 A Yes.</p>	<p style="text-align: right;">Page 112</p> <p>1 Q Okay. And when the check -- when the 2 payment was processed, that would increase as it -- 3 that would be -- that would operate as a draw on the 4 four million dollar line of credit; is that correct?</p> <p>5 A Yes.</p> <p>6 Q Okay.</p> <p>7 MR. GEBHARDT: I have an objection to 8 that question as phrased.</p> <p>9 Q Okay. You understood the question, you 10 answered it. I'm satisfied with the answer.</p> <p>11 Prior to mid-February, 2000, February 18th, 12 had Allfirst ever declared a default with respect to 13 any of CCI's loan facilities?</p> <p>14 A Is that the date that the default was 15 declared?</p> <p>16 Q Let's assume it was February 18th or on or 17 about.</p> <p>18 Prior to the default, with a capital D --</p> <p>19 MR. GEBHARDT: Wait a minute.</p> <p>20 MR. SWICHAR: Do you have an objection?</p> <p>21 MR. GEBHARDT: Yeah, there's no</p>

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<p style="text-align: right;">Page 113</p> <p>1 evidence that there was a default declared on      2 February 18.      3 The default letter was February 24.      4 MR. SWICHAR: Fine.      5 Q (By Mr. Swichar) Prior to the default      6 reflected on Exhibit D of the Complaint -- thank you      7 for that -- had the bank ever had the occasion to      8 declare a default on any of CCI's loan facilities?      9 A Not to my knowledge.      10 Q Okay. All interest payments were made      11 timely?      12 A I would believe so.      13 Q All principal payments were made timely?      14 A Without going back and looking, I believe      15 so.      16 Q All right.      17 MR. SWICHAR: What do you want to do --      18 let's go off the record.      19 (Discussion off the record.)      20 (Thereupon, at 12:20 p.m., a luncheon      21 recess was taken.)</p>	<p style="text-align: right;">Page 115</p> <p>1 A No, I mean as far as -- can you tell me?      2 Q I can tell you that the meeting occurred on      3 February 18, 2000.      4 MR. GEBHARDT: Which is a Friday.      5 Q Which is a Friday, according to      6 Mr. Gebhardt.      7 And there was a meeting in Harrisburg, and I      8 believe that Mr. Gibson and Mr. Elias were present by      9 telephone.      10 A Okay.      11 Q And there was a whole lot of people.      12 A Okay. And the question was?      13 Q How did the meeting come about?      14 How did the scheduling of that meeting come      15 about? How did the attendance of those who were there      16 come about?      17 A To the best of my recollection, CCI called      18 and wanted to talk to the bank about cash flow, more      19 cash flow problems.      20 Q Called you?      21 A I don't recall.</p>
<p style="text-align: right;">Page 114</p> <p>1 AFTERNOON SESSION (1:03 p.m.)      2 MR. SWICHAR: Let's resume.      3 Q (By Mr. Swichar) Mr. Schwartz, in connection      4 with this lawsuit, have you had any conversations with      5 any former loan officer of CCI?      6 A Any former --      7 Q Loan officers.      8 Any former officers of CCI.      9 A No.      10 Q Since the declaration of the default, which      11 we've seen a copy of, have you had any conversations      12 with any former officer of CCI, including      13 Mr. Ortenzio, Miss Phillips, anyone else?      14 A No.      15 Q Do you recall that a meeting occurred on      16 February 18, 2000, at Allfirst Bank in Harrisburg?      17 A Yes.      18 Q How did that meeting come about?      19 A Can you put in the chronological order, the      20 dates?      21 Q Sure, whatever is helpful to you.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q Okay. And you wouldn't recall who at CCI      2 made the call?      3 A Correct.      4 Q What happened next?      5 A The meeting was scheduled.      6 Q How did it come about that those who      7 attended the meeting in person or by phone attended      8 the meeting?      9 A I believe we were informed that the loss CCI      10 was -- had for 1999 was in the six million dollar      11 range.      12 Q Before the meeting?      13 A Yes.      14 Q Okay. By -- do you know who said that?      15 A No, I don't. I don't recall.      16 Q Okay, okay.      17 And then, for example, who saw to it that      18 Mr. Gibson and Mr. Elias attended the meeting by      19 phone, if you know?      20 A I don't recall exactly who called them --      21 Q Did you call them?</p>

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<p style="text-align: right;">Page 117</p> <p>1 A -- or got in contact with them.      2 I do not recall.      3 Q Okay. It's possible that you did?      4 A It is possible.      5 Q And is that because of what was said by CCI      6 on the phone to whomever it was said to that they      7 decided to --      8 A That was a result of that, yes.      9 Q Okay. What happened at that meeting, to the      10 best of your recollection?      11 A The bank was told that the cash flow      12 problems for CCI had -- were continuing, they were      13 pretty severe.      14 Q Was that CCI's word, severe, or was that      15 your construction of it?      16 A This would be my construction of it.      17 Q I'd rather you just tell me what you recall      18 being said.      19 MR. GEBHARDT: Do you want --      20 A Well, then, I do not recall --      21 MR. GEBHARDT: You want a quote --</p>	<p style="text-align: right;">Page 119</p> <p>1 severe financial situation, for example.      2 A Well, we knew the loss to the company was      3 around the six million dollar mark. Cash flow      4 continued to be a problem for CCI. CCI had stopped      5 making some payments to some of their subcontractors      6 on some jobs.      7 That's about the best I can recall now.      8 Q Now, do you remember the various comments by      9 the various bank representatives?      10 A No, I do not recall.      11 Q Did you take any notes at that meeting?      12 A No, I did not.      13 Q Did you ever see any memorandum prepared      14 contemporaneous with or in connection with that      15 meeting shortly thereafter by anyone?      16 A No, I did not.      17 Q Were you ever shown any memo of that      18 meeting?      19 A Shortly thereafter, no.      20 Q Well, at any time, then.      21 Have you seen a memorandum dealing with that</p>
<p style="text-align: right;">Page 118</p> <p>1 A -- exactly.      2 MR. GEBHARDT: -- or to give the      3 substance of what he recalls?      4 There's a difference.      5 MR. SWICHAR: Right, there is a      6 difference.      7 I'm asking him to tell me if he has a      8 recollection of what I -- of what he was told at that      9 meeting.      10 MR. GEBHARDT: Exactly?      11 MR. SWICHAR: It doesn't have to be      12 exactly. I don't expect him to be that great of      13 things, remembering things.      14 Q (By Mr. Swichar) Just generally, what do you      15 recall being told factually by CCI at that meeting?      16 MR. GEBHARDT: When you ask him to put      17 it in his own words, is it a quote or --      18 MR. SWICHAR: He interpreted those      19 words as severe, and that's a little bit different.      20 Q (By Mr. Swichar) I want to know what, what      21 was said to you that led you to believe that it was a</p>	<p style="text-align: right;">Page 120</p> <p>1 meeting?      2 A I've seen some notes.      3 Q Okay. Whose notes?      4 A Mr. Gibson's.      5 Q Okay. What was the -- what were the      6 circumstances of your seeing those notes?      7 A Preparation for this.      8 Q For this deposition?      9 A Yes.      10 Q Okay. You didn't see them in connection      11 with the actual meeting, then?      12 A Oh, no.      13 Q Okay.      14 A No.      15 Q Do you recall if CCI furnished to you any      16 documents at that meeting?      17 A An internal-prepared financial statement on      18 CCI, possibly a cash flow.      19 Q Do you recall Mr. Elias saying anything on      20 the phone at that meeting, participating in any      21 fashion, by making comments?</p>

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<p style="text-align: right;">Page 121</p> <p>1 A Not that I recall.</p> <p>2 Q Okay. Where was it left at that meeting</p> <p>3 before -- when, when the CCI representative left, had</p> <p>4 there been any conclusions reached, or what was said?</p> <p>5 What was the next step going to be, at least</p> <p>6 before the adjournment of that meeting?</p> <p>7 Was anything concluded?</p> <p>8 A I don't really recall what was to be</p> <p>9 concluded at that point.</p> <p>10 Q Okay. Well, do you recall where it was left</p> <p>11 at that meeting, what was going to happen next?</p> <p>12 A No.</p> <p>13 Q Did the bank have any other meeting after</p> <p>14 that February 18th meeting without CCI representatives</p> <p>15 to discuss the next step?</p> <p>16 A Not that I was a part of.</p> <p>17 Q But do you recall that there was such a</p> <p>18 meeting, even though you were not a part of it?</p> <p>19 A No, I do not know if there was a meeting.</p> <p>20 Q Okay. Did you take any action as a result</p> <p>21 of the meeting?</p>	<p style="text-align: right;">Page 123</p> <p>1 Q Let me ask you --</p> <p>2 A I'm not exact -- I'm not sure.</p> <p>3 Q If the 18th was a Friday, do you have any</p> <p>4 recollection?</p> <p>5 Were you contacted to do that?</p> <p>6 A No, I was not.</p> <p>7 Q But you heard about it?</p> <p>8 A Yes.</p> <p>9 Q And, again, can you tell me the approximate</p> <p>10 day or date?</p> <p>11 Within how many days of the 18th would you</p> <p>12 say?</p> <p>13 A Five, six.</p> <p>14 Q Okay. Maybe a week, then?</p> <p>15 A If that's five or six to you.</p> <p>16 Q Well, I want it to be to you, not to me.</p> <p>17 MR. GEBHARDT: You've got the witness</p> <p>18 guessing. He says he doesn't know.</p> <p>19 MR. SWICHAR: I understand.</p> <p>20 MR. GEBHARDT: So --</p> <p>21 MR. SWICHAR: I'm just trying to</p>
<p style="text-align: right;">Page 122</p> <p>1 Were you requested to do anything, or did</p> <p>2 you do anything on your own?</p> <p>3 A Not that I can recall.</p> <p>4 Q At the meeting, do you recall Mr. Ortenzio</p> <p>5 being requested to guarantee all or part of the four</p> <p>6 million dollar note?</p> <p>7 A I do not recall.</p> <p>8 Q Either way?</p> <p>9 A Either way.</p> <p>10 Q Do you recall Mr. Ortenzio requesting the</p> <p>11 bank to be patient while it meets -- while CCI meets</p> <p>12 with its bonding companies?</p> <p>13 A I don't recall.</p> <p>14 Q Did Mr. Ortenzio on behalf of CCI request</p> <p>15 any additional monies from the bank at that meeting?</p> <p>16 A I don't recall.</p> <p>17 Q Now, in relation to that meeting, which</p> <p>18 we'll say was February 18th, a Friday, do you recall</p> <p>19 when the bank froze CCI's accounts?</p> <p>20 A I believe it was the next -- during the next</p> <p>21 week. I --</p>	<p style="text-align: right;">Page 124</p> <p>1 refresh his recollection, but I appreciate your</p> <p>2 interruption.</p> <p>3 MR. GEBHARDT: No, I mean --</p> <p>4 THE WITNESS: That's the best that I</p> <p>5 can do.</p> <p>6 MR. SWICHAR: Fine.</p> <p>7 Q (By Mr. Swichar) Are there any documents</p> <p>8 that would tell me the date that the bank froze the</p> <p>9 account?</p> <p>10 How would I know that? Because I would like</p> <p>11 to know that date, and I don't see any documents that</p> <p>12 reflect that.</p> <p>13 A I don't know.</p> <p>14 Q Okay.</p> <p>15 MR. SWICHAR: Could you furnish me,</p> <p>16 Larry, with any document that would reflect that date?</p> <p>17 MR. GEBHARDT: You have all documents</p> <p>18 that relate to the termination of the loan --</p> <p>19 MR. SWICHAR: I understand --</p> <p>20 MR. GEBHARDT: And --</p> <p>21 MR. SWICHAR: -- but there's no</p>

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<p style="text-align: right;">Page 125</p> <p>1 document that I could find or interpret that would      2 tell me that date. And if there is such a document, I      3 would ask that the bank interpret it for me and just      4 call it to my attention.</p> <p>5 The alternative is to take all thousand      6 documents and go page by page, which I don't want to      7 do. I assume there's --</p> <p>8 MR. GEBHARDT: You might take a      9 thousand documents. If something -- I mean, my      10 understanding is that on the Wednesday prior to the      11 declaration of default, the credit line was cut off,      12 and there are some internal memoranda telling people      13 to not honor the checks, and so you have copies of      14 those.</p> <p>15 MR. SWICHAR: What day -- I'm not      16 questioning you, but if you will help me out, because      17 I know you want to -- what was the date when the      18 declaration -- what was the day of the declaration of      19 default, the 24th?</p> <p>20 MR. GEBHARDT: The 24th, a Thursday.      21 MR. SWICHAR: Thursday.</p>	<p style="text-align: right;">Page 127</p> <p>1 represent to you, in Baltimore on February 23rd, 2000.      2 Did you attend that meeting?      3 A No.      4 Q Were you aware of it?      5 A No.      6 Q Did you hear anything about it after the      7 meeting?      8 A No.      9 Q I'm just curious, as the relationship of      10 loan officer, wouldn't they tell you what's going on?      11 It sounds like you didn't really -- really      12 weren't kept informed after the first meeting of the      13 18th.      14 A That is correct.      15 Q Is there a reason for that?      16 A At that point, it was no longer my account.      17 It was not being handled -- I was not to be involved      18 in the account anymore.      19 Q Well, when was that, and how was that      20 decided?      21 A Once Mr. Elias and Mr. Gibson are involved</p>
<p style="text-align: right;">Page 126</p> <p>1 And on what day prior to that was there      2 a freezing of the accounts?</p> <p>3 MR. GEBHARDT: Wednesday afternoon, CCI      4 was called and told that the account was being frozen.</p> <p>5 MR. SWICHAR: As of that day?</p> <p>6 MR. GEBHARDT: Yes, sir.</p> <p>7 MR. SWICHAR: And that was the same      8 with the bouncing of checks?</p> <p>9 MR. GEBHARDT: Yes. Everything was --      10 that was it.</p> <p>11 MR. SWICHAR: On the 23rd?</p> <p>12 MR. GEBHARDT: Right.</p> <p>13 Mr. Elias is the one that put that into      14 effect.</p> <p>15 MR. SWICHAR: Okay. That saved me a      16 lot of time.</p> <p>17 Q (By Mr. Swichar) Now that Mr. Gebhardt has      18 clarified that, were you involved in that process at      19 all?</p> <p>20 A No.</p> <p>21 Q Now, there was a subsequent meeting, I'll</p>	<p style="text-align: right;">Page 128</p> <p>1 in an account, we're not involved in accounts anymore.      2 That's standard operating procedure.      3 Q And that would have been right immediately      4 after the meeting of February 18?      5 A Yeah, I don't believe I participated in      6 anything, any decision-making, what was going on      7 there.      8 Q Do you recall when the account was      9 transferred to Workout?      10 A No, I don't.      11 Q Let me help you.      12 I'll show you Schwartz 10, which is a      13 document dated March 3, 3000 (sic), from you to      14 Special Credits, Mr. Gibson, transferring CCI to his      15 area.      16 Does that refresh your recollection?      17 A Yes.      18 Q Was, in fact, it transferred away from you      19 on March 3rd, 3000 (sic)?      20 A Formally.      21 Q Formally.</p>

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<p style="text-align: right;">Page 129</p> <p>1        But from on and after the 18th of February,      2 it had been informally taken away from you?</p> <p>3        A Yes.</p> <p>4        Q And you weren't kept informed as the point      5 man or loan officer with CCI as to what was happening?</p> <p>6        A An occasional nut as to the specifics.</p> <p>7        Generally, I had a little bit idea what was      8 going on at that time.</p> <p>9        Q How did you acquire that idea?</p> <p>10      A Phone calls.</p> <p>11      Q To whom?</p> <p>12      A From.</p> <p>13      Q Or from whom?</p> <p>14      A To the best that I can recall, Jamin,      15 Mr. Gibson.</p> <p>16      Q And what, would he call you and tell you      17 what's happening?</p> <p>18      A I believe he requested this from me --</p> <p>19      Q Did he tell you --</p> <p>20      A -- for me to transfer this.</p> <p>21      Q Did he tell you on or about, but before the</p>	<p style="text-align: right;">Page 131</p> <p>1        A Yes.</p> <p>2        Q Don't you think as a long-term loan officer,      3 the point man having the relationship with CCI and      4 Mr. Ortenzio, you should have known what was going on      5 and been involved in the process, or at least been      6 informed?</p> <p>7        A Which one of those do you want me to answer?</p> <p>8        Q All three, whichever way you want it.</p> <p>9        A I was informed of what was going on.</p> <p>10      Q Did you agree with what was going on?</p> <p>11      A My opinion didn't really matter.</p> <p>12      I don't recall if I agreed or if I didn't      13 agree.</p> <p>14      Q So you had no opinion at all?</p> <p>15      A None that I issued to anybody.</p> <p>16      Q Well, that's not my question.</p> <p>17      Did you have an opinion on the propriety of      18 what the bank was doing, whether or not you issued it      19 to anybody?</p> <p>20      A Yes.</p> <p>21      Q What was that opinion?</p>
<p style="text-align: right;">Page 130</p> <p>1        23rd, that CCI's accounts were going to be frozen?</p> <p>2        A On or about.</p> <p>3        Q Did you participate in the freezing of those      4 accounts?</p> <p>5        A No.</p> <p>6        Q Take any mechanics to do that?</p> <p>7        You weren't involved?</p> <p>8        A Not that I recall.</p> <p>9        Q Okay. Did he tell you why the bank did      10 that -- was doing that?</p> <p>11      A Not that I recall.</p> <p>12      Q Did you ever ask?</p> <p>13      You knew the bank was freezing the accounts      14 of your long-time customer, and you never asked what's      15 going on? Why?</p> <p>16      Did you care?</p> <p>17      A I don't recall if I asked or if I didn't      18 ask.</p> <p>19      Q Would you --</p> <p>20      A Of course, I care.</p> <p>21      Q Would you have normally asked?</p>	<p style="text-align: right;">Page 132</p> <p>1        A I don't recall.</p> <p>2        Q But you had an opinion, but you don't      3 recall?</p> <p>4        A Yes.</p> <p>5        Q Well, how do you recall you had an opinion      6 if you don't recall what it was?</p> <p>7        A I have an opinion on everything.</p> <p>8        Q You have an opinion on today, I assume.</p> <p>9        A Possibly, yes.</p> <p>10      Q Okay. I want you to be consistent.</p> <p>11      So you had an opinion that you kept to      12 yourself on the propriety of what the bank was doing      13 to CCI on or about February 23, 2000?</p> <p>14      A After the meeting on February 18th, and      15 those that were in attendance at that meeting, I was      16 low man on the totem pole.</p> <p>17      After that meeting, somebody other than      18 myself made a decision to proceed what you previously      19 explained.</p> <p>20      I usually do not find out what is done when      21 an account starts to be handled by Special Credits,</p>

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<p style="text-align: right;">Page 133</p> <p>1 Mr. Gibson or Mr. Elias, and the document that, that 2 is Schwartz 10 was in response to a request by 3 Mr. Gibson to transfer the CCI account over to him 4 formally in our computer system.</p> <p>5 Q Okay, but that wasn't my question.</p> <p>6 My question was, that as the person who had 7 a longstanding relationship with CCI, even though you 8 were the low man on the totem pole, you necessarily 9 would have had an opinion on what the bank was doing, 10 whether it was proper or not, right?</p> <p>11 You said you had an opinion on everything.</p> <p>12 A Yes.</p> <p>13 Q And the answer is yes.</p> <p>14 And as low man on the totem pole, you didn't 15 want to share that opinion with anyone; is that right?</p> <p>16 A My opinion at that point didn't matter.</p> <p>17 Q But at the same time, you didn't want to 18 share it with anyone for the reason that it didn't 19 matter?</p> <p>20 A My opinion didn't matter at that point.</p> <p>21 Q Was that the reason you didn't want to share</p>	<p style="text-align: right;">Page 135</p> <p>1 would apply to more than one relationship?</p> <p>2 A Yes.</p> <p>3 Q For example, someone borrowed one million 4 dollars and the same borrower borrowed three million 5 dollars, and there would be a guarantee that covered 6 both facilities; is that fair?</p> <p>7 A Yes.</p> <p>8 Q And would be -- would you have a situation 9 where there would be a three million dollar loan and a 10 one million dollar loan, and there would be a 11 guarantee of the last one million dollars of both of 12 those facilities, but limited to one million dollars?</p> <p>13 A That could occur.</p> <p>14 Q Did it ever occur during your long history 15 as a loan officer?</p> <p>16 A I can't recall.</p> <p>17 Q But it's possible it could occur, right?</p> <p>18 A Yes.</p> <p>19 Q There's no impediment to the bank doing 20 that; is that right?</p> <p>21 A Yes.</p>
<p style="text-align: right;">Page 134</p> <p>1 it with anybody?</p> <p>2 A I just chose not to share it with anybody.</p> <p>3 Q Okay. Did you agree with what the bank did?</p> <p>4 A Yes.</p> <p>5 Q Was that your opinion?</p> <p>6 A Yes.</p> <p>7 Q Okay. In your history as a loan officer, 8 have you ever approved multiple loans to a single 9 borrower, such as the relationship with CCI?</p> <p>10 Were there other situations where you had 11 different facilities to a single borrower?</p> <p>12 A I have not -- I do not -- did not have the 13 lending authority to approve.</p> <p>14 Q I don't mean approve, but did you ever -- 15 were you ever involved -- I'm sorry, you're right -- 16 were you ever involved in any loan relationships where 17 there was more than one facility to a single borrower, 18 such as existed with CCI?</p> <p>19 A Customers have more than one borrowing 20 relationship.</p> <p>21 Q And are there situations where a guarantee</p>	<p style="text-align: right;">Page 136</p> <p>1 Q Who made the decision, if you know, to 2 declare the default?</p> <p>3 Was that Mr. Elias, to make a long story 4 short, if you know?</p> <p>5 A I believe so.</p> <p>6 Q Did he talk to you before declaring -- 7 before making the decision to declare the default, did 8 he ask you your input?</p> <p>9 A Not that I recall.</p> <p>10 Q Have you ever seen any document at all in 11 this universe prepared by the bank that analyzes 12 contemporaneously the material adverse change that 13 gave rise to the declaration of default by the bank?</p> <p>14 A Can you rephrase that?</p> <p>15 Q I thought it was pretty good the first time.</p> <p>16 A I didn't understand the first time.</p> <p>17 Q Have you ever seen any document in this 18 whole wide world that would constitute an analysis by 19 the bank of CCI's financial condition that gave rise 20 to its declaring the default of the loan; i.e., the 21 material adverse change?</p>

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<p style="text-align: right;">Page 137</p> <p>1 A The note says that.</p> <p>2 Q But have you ever seen an analysis done</p> <p>3 prior to declaring the default that says here is why</p> <p>4 they're in default, here is why there is a material</p> <p>5 adverse change that warrants a declaration of a</p> <p>6 default?</p> <p>7 Banks analyze things --</p> <p>8 A Not that I recall.</p> <p>9 Q Okay. Would you look at the last exhibit to</p> <p>10 the Complaint, sir, Exhibit D, which is Mr. Gebhardt's</p> <p>11 letter to CCI declaring the default on February 24,</p> <p>12 2000?</p> <p>13 Did you review that before it was sent?</p> <p>14 A No.</p> <p>15 Q Okay. Now, let me ask more specifically.</p> <p>16 That letter declares a default on the basis</p> <p>17 of a material adverse change in the financial</p> <p>18 condition of CCI; is that correct?</p> <p>19 A Yes.</p> <p>20 Q All right. As the loan officer, are you</p> <p>21 able to -- were you able to analyze what that material</p>	<p style="text-align: right;">Page 139</p> <p>1 and look at that, Schwartz 11.</p> <p>2 (Witness complying.)</p> <p>3 Q Let me ask the question first, and maybe it</p> <p>4 will be easier.</p> <p>5 This document reflects that the four million</p> <p>6 dollar unsecured line of credit was rated as a number</p> <p>7 five risk on a scale of one to ten, is that correct,</p> <p>8 as of March 15, 1999?</p> <p>9 A Yes.</p> <p>10 Q And that's an acceptable risk to the bank?</p> <p>11 A Define acceptable.</p> <p>12 Q Well, the bank approved the loan, so I'm</p> <p>13 assuming it was somewhat acceptable.</p> <p>14 A Yes.</p> <p>15 Q It was within the parameters of either</p> <p>16 making or keeping the loan in existence, right?</p> <p>17 A Yes.</p> <p>18 Q Okay. What does the number five mean, by</p> <p>19 the way, in bank parlance?</p> <p>20 A Average.</p> <p>21 It's five. It's between one and ten, it's</p>
<p style="text-align: right;">Page 138</p> <p>1 adverse change was prior to the declaration of</p> <p>2 default?</p> <p>3 MR. GEBHARDT: You're asking were you</p> <p>4 able, or did you?</p> <p>5 MR. SWICHAR: Did -- either one.</p> <p>6 MR. GEBHARDT: Well, wait a minute.</p> <p>7 They're two different --</p> <p>8 MR. SWICHAR: I like your question</p> <p>9 better.</p> <p>10 Q (By Mr. Swichar) Did you?</p> <p>11 MR. GEBHARDT: Okay.</p> <p>12 A No.</p> <p>13 Q Okay. You haven't seen that analysis</p> <p>14 anywhere, either, or you don't recall, you said.</p> <p>15 A I don't recall.</p> <p>16 Q Okay. Presumably, Mr. Gebhardt would have</p> <p>17 done that, or he wouldn't have sent the letter, right?</p> <p>18 MR. GEBHARDT: Objection.</p> <p>19 Q You don't have to answer that one. That was</p> <p>20 for my own enjoyment.</p> <p>21 Let me show you Schwartz 11. Take a minute</p>	<p style="text-align: right;">Page 140</p> <p>1 right in the middle.</p> <p>2 Q Is that unusual or usual, or there is no</p> <p>3 usual or unusual?</p> <p>4 A It's average credit risk.</p> <p>5 Q Average credit risk.</p> <p>6 Now, am I correct in stating that the</p> <p>7 1.2 million dollar facility also had a number five</p> <p>8 rating risk? Is that correct?</p> <p>9 A That, I don't know. I don't recall.</p> <p>10 Q Well, if we go back to the 1.2 million</p> <p>11 dollar loan approval, or if you look at it now -- go</p> <p>12 back and look at S-4 -- see that, about the middle of</p> <p>13 the page, where it says new temporary 1.2 million?</p> <p>14 A Yes.</p> <p>15 Q The 1.2 million facility standing alone also</p> <p>16 had an acceptable or average number five credit risk;</p> <p>17 is that right?</p> <p>18 A On November 3rd.</p> <p>19 Q That's right.</p> <p>20 Did you maintain a personal desk file with</p> <p>21 respect to CCI?</p>

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<p style="text-align: right;">Page 141</p> <p>1 A Yes.</p> <p>2 Q Have you turned that over to Mr. Gebhardt or 3 someone else in connection with this lawsuit?</p> <p>4 A Yes.</p> <p>5 MR. SWICHAR: Can I assume it's been 6 turned over, Larry?</p> <p>7 MR. GEBHARDT: You have it all.</p> <p>8 MR. SWICHAR: That's all I want to 9 hear, that's fine.</p> <p>10 I mean, the way the documents came, it 11 was very difficult what came with what.</p> <p>12 MR. GEBHARDT: I mean, we, we went 13 through this, and we went through it with Judge Rambo.</p> <p>14 MR. SWICHAR: I'm just asking if we got 15 it, that's all. That's fine.</p> <p>16 MR. GEBHARDT: I said we made those 17 representations and told you all many times --</p> <p>18 MR. SWICHAR: If you told me I have his 19 personal desk file, then that's good enough for me.</p> <p>20 Q (By Mr. Swichar) Would you look at the 21 Complaint?</p>	<p style="text-align: right;">Page 143</p> <p>1 from the accounts receivable that it collects from the 2 account at Allfirst without drawing on the four 3 million dollar line of credit, how could it do that, 4 if it could at all?</p> <p>5 A One more time, please.</p> <p>6 Q All right. I'm CCI and I want to pay a 7 bill. I collect my money from the customer, I put it 8 in the account, and I want to pay another bill -- I 9 want to pay a bill, but I don't want it to draw on the 10 line of credit, four million dollar line of credit.</p> <p>11 How -- could I do that?</p> <p>12 A I don't think so.</p> <p>13 Q Is there any document in this world that 14 prohibits CCI specifically from repaying the 15 1.2 million dollar note by drawing on the four million 16 dollar line of credit?</p> <p>17 A Is there a document that prohibits them?</p> <p>18 Q Yes, specifically.</p> <p>19 A Yes, I believe so.</p> <p>20 Q That prohibits specifically -- is there a 21 specific prohibition?</p>
<p style="text-align: right;">Page 142</p> <p>1 Do you have that there, S-2?</p> <p>2 Just -- did you review this Complaint before 3 it was filed?</p> <p>4 A I'm not sure. I don't recall if I did or if 5 I didn't.</p> <p>6 Q Did you review it in connection with this 7 deposition?</p> <p>8 A Yes.</p> <p>9 Q Okay. Would you look at -- just so I can 10 clarify things again -- would you look at 11 Paragraph 7?</p> <p>12 And, again, my question is, just so I 13 understand the mechanism of the cash management 14 facility, that any checks written from CCI's account 15 with the bank would increase the four million dollar 16 line of credit borrowings; is that correct?</p> <p>17 A Yes.</p> <p>18 Q And so far as you know, CCI had no business 19 accounts elsewhere?</p> <p>20 A As far as I know, they did not.</p> <p>21 Q Okay. If -- if CCI wanted to pay a bill</p>	<p style="text-align: right;">Page 144</p> <p>1 And if there is, we'll find it.</p> <p>2 MR. GEBHARDT: You've been provided it.</p> <p>3 MR. SWICHAR: Pardon me?</p> <p>4 MR. GEBHARDT: You've been provided it.</p> <p>5 A I believe it states what the line of credit 6 can be used for, and that is not a use of a line of 7 credit.</p> <p>8 Q (By Mr. Swichar) All right. Is there any 9 document that deals with how the, how the loan is to 10 be repaid specifically?</p> <p>11 A No.</p> <p>12 Q Okay. Is there any document that 13 specifically states it cannot be repaid by writing a 14 check on CCI's business account, checking account?</p> <p>15 THE WITNESS: Could you read that back? (Question was read by the Reporter.)</p> <p>16 A Not specifically.</p> <p>17 Q (By Mr. Swichar) Okay. Now, the loan 18 commitment, which I think you've been chomping at the 19 bit to want to tell me, states that the loan proceeds 20 were to be used to finance accounts receivable and</p>

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<p style="text-align: right;">Page 145</p> <p>1 work in progress; is that correct?</p> <p>2 A That's correct.</p> <p>3 Q Prior to the repayment of the 1.2 million</p> <p>4 dollar note in February, on February 11, 2000, were</p> <p>5 you aware of CCI ever using the 1.2 million dollar</p> <p>6 loan proceeds for any other purpose?</p> <p>7 MR. GEBHARDT: For any other purpose?</p> <p>8 Q Other than to finance accounts receivable</p> <p>9 and work in progress, prior to the repayment.</p> <p>10 A I am not aware of any.</p> <p>11 Q Okay. In fact, you didn't monitor, you said</p> <p>12 earlier; am I right?</p> <p>13 You didn't monitor the use of the</p> <p>14 1.2 million dollar loan proceeds, did you?</p> <p>15 A No.</p> <p>16 Q Okay. Are you aware of any reason why the</p> <p>17 bank did not put in the commitment letter or in the</p> <p>18 1.2 million dollar note or guarantee the express</p> <p>19 prohibition that the four million dollar line of</p> <p>20 credit could not be used to repay the 1.2 million</p> <p>21 dollar note?</p>	<p style="text-align: right;">Page 147</p> <p>1 Are you aware of any reason why the bank</p> <p>2 couldn't put in the commitment letter for the</p> <p>3 1.2 million or in the 1.2 million dollar note or</p> <p>4 in the 1.2 million dollar suretyship an express</p> <p>5 prohibition that that facility could not be repaid by</p> <p>6 drawing down on the four million dollar line of</p> <p>7 credit?</p> <p>8 A There's no reason the bank could not have</p> <p>9 done that.</p> <p>10 Q In fact, the loan commitment contains</p> <p>11 negative covenants; is that right?</p> <p>12 A I believe so.</p> <p>13 Q And what's a negative covenant?</p> <p>14 A Things that the borrower is not allowed to</p> <p>15 do.</p> <p>16 Q And the loan commitment and/or the note</p> <p>17 contains loan -- negative covenants, correct?</p> <p>18 A Yes.</p> <p>19 Q Okay. And the bank could have put in a</p> <p>20 negative covenant that prohibited the repayment of the</p> <p>21 1.2 million from the four million dollar line of</p>
<p style="text-align: right;">Page 146</p> <p>1 MR. GEBHARDT: Objection.</p> <p>2 Q You can answer it.</p> <p>3 THE WITNESS: Would you read that back,</p> <p>4 please?</p> <p>5 (Question was read by the Reporter.)</p> <p>6 A It was a -- the loan amount for 1.2 million</p> <p>7 dollars was for a cash flow shortage situation that</p> <p>8 was occurring --</p> <p>9 Q (By Mr. Swichar) I understand.</p> <p>10 A -- so -- and, also, the line was there to</p> <p>11 finance the receivables and work in process.</p> <p>12 So the 1.2 million dollars would normally be</p> <p>13 paid back after there's no usage on the line because</p> <p>14 the receivables had been collected and cash flow is</p> <p>15 sufficient to pay back the 1.2 million dollars over</p> <p>16 and above the line balance.</p> <p>17 Q Where does it say that, other than in your</p> <p>18 head?</p> <p>19 A It's -- it doesn't say that anywhere.</p> <p>20 Q Okay. So let's go back and ask the same</p> <p>21 question. I'll say it a little slower this time.</p>	<p style="text-align: right;">Page 148</p> <p>1 credit; is that correct?</p> <p>2 Nothing prohibited that, right?</p> <p>3 A Nothing prohibited that.</p> <p>4 Q No banking practice that I'm unaware of,</p> <p>5 correct?</p> <p>6 A No.</p> <p>7 Q No regulation or rule somewhere out there</p> <p>8 disguised that I'm not aware of?</p> <p>9 A Correct.</p> <p>10 Q Okay. Is there any request by the bank to</p> <p>11 ask Mr. Ortenzio, on Mr. Ortenzio, to guarantee more</p> <p>12 than the 1.2 million other than the document we saw</p> <p>13 which was for the five million?</p> <p>14 A No.</p> <p>15 Q Explain to me when and how you learned that</p> <p>16 the 1.2 million dollar note had been repaid.</p> <p>17 A I received a phone call on the day that the</p> <p>18 note was repaid --</p> <p>19 Q February 11th?</p> <p>20 A -- February 11th -- from Mr. Ortenzio, that</p> <p>21 he was going to bring in a check to pay off the</p>

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<p style="text-align: right;">Page 149</p> <p>1 1.2 million dollars. I said, okay, fine.</p> <p>2 I was out on other business when, when he</p> <p>3 came in and presented the payment. I was told about</p> <p>4 it when I got back. And --</p> <p>5 Q What were you told?</p> <p>6 A That Mr. Ortenzio came in and paid off the</p> <p>7 1.2 million dollar loan.</p> <p>8 QOkay. What happened next?</p> <p>9 Did you take any action of any kind?</p> <p>10 A Not that I recall.</p> <p>11 Q Well, at a certain point, you returned the</p> <p>12 note to him, correct?</p> <p>13 A No, I did not.</p> <p>14 I returned his surety.</p> <p>15 QOkay. You --</p> <p>16 AHe was -- yes.</p> <p>17 QOkay. You returned the surety, and we'll</p> <p>18 come to that in a minute.</p> <p>19 Where did you think the -- what funds did</p> <p>20 you think were being used to pay off the 1.2, or you</p> <p>21 didn't think about it?</p>	<p style="text-align: right;">Page 151</p> <p>1 think we marked it, so I just want to confirm that</p> <p>2 Schwartz 12 is the -- what I'll call the loan</p> <p>3 commitment letter because I know you like that letter.</p> <p>4 Let's look at it, and at least tell me that</p> <p>5 that is, indeed, the loan commitment letter.</p> <p>6 A This is a commitment letter for the four</p> <p>7 million dollar line of credit.</p> <p>8 QOkay, that's all.</p> <p>9 Would you look at Exhibit S-13, which is</p> <p>10 your letter to Mr. Ortenzio at CCI dated February 15,</p> <p>11 2000?</p> <p>12 A Yes.</p> <p>13 Q How did you determine that the 1.2 million</p> <p>14 dollar loan had been paid in full as of February 11?</p> <p>15 AI looked on the computer.</p> <p>16 Q And what did the computer show?</p> <p>17 AA zero balance.</p> <p>18 QOkay. Did that computer screen deal only</p> <p>19 with the 1.2, or would it have looked at, more</p> <p>20 specifically, at the cash management account, the</p> <p>21 checking account, the four million dollar line of</p>
<p style="text-align: right;">Page 150</p> <p>1 A I don't recall thinking about it.</p> <p>2 Q Okay. Frankly, you didn't care.</p> <p>3 A I didn't say that.</p> <p>4 Q I'm asking.</p> <p>5 A Sure, I cared.</p> <p>6 Q Well, but you didn't ask, did you --</p> <p>7 A No.</p> <p>8 Q -- the source of the funds?</p> <p>9 A No.</p> <p>10 Q But you cared?</p> <p>11 A Yes.</p> <p>12 Q Why did you care?</p> <p>13 A In hopes that their cash flow situation was</p> <p>14 back where they said it was going to be at that point;</p> <p>15 it was going to be great, we didn't have a big problem</p> <p>16 to worry about, and things were going well for them.</p> <p>17 Q But you never cared enough to call</p> <p>18 Mr. Ortenzio to find out the source of the funds?</p> <p>19 A I did not call Mr. Ortenzio.</p> <p>20 Q All right. I don't think -- I think we</p> <p>21 talked about the loan commitment letter, but I don't</p>	<p style="text-align: right;">Page 152</p> <p>1 credit, et cetera, et cetera?</p> <p>2 A Just the 1.2.</p> <p>3 Q Okay. But you had the other means of</p> <p>4 checking to see what the availability was and the</p> <p>5 balance was of the four million?</p> <p>6 A I had the means.</p> <p>7 Q You chose not to go into that?</p> <p>8 A I don't recall if I did or if I didn't.</p> <p>9 Q Is it possible you did?</p> <p>10 A I don't recall.</p> <p>11 Q You don't recall either way?</p> <p>12 A Correct.</p> <p>13 Q Okay. Was this mailed or hand-delivered,</p> <p>14 S-13?</p> <p>15 A I don't recall.</p> <p>16 Q Did you ever inquire the source of payment?</p> <p>17 A No.</p> <p>18 Q Okay. Now, when Mr. Ortenzio on behalf of</p> <p>19 CCI wrote a check and repaid the 1.2 million dollar</p> <p>20 note, he was acting on behalf of CCI as an officer; is</p> <p>21 that correct?</p>

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<p style="text-align: right;">Page 153</p> <p>1           MR. GEBHARDT: Objection.</p> <p>2     A I don't know.</p> <p>3     Q Well, he wrote a check as an officer of CCI,</p> <p>4 didn't he?</p> <p>5           MR. GEBHARDT: Objection.</p> <p>6     Q You can answer.</p> <p>7     A I don't know who wrote the check.</p> <p>8     Q Well, assuming Mr. Ortenzio was responsible</p> <p>9 for paying the 1.2 million, who was he acting on</p> <p>10 behalf of?</p> <p>11          MR. GEBHARDT: Objection.</p> <p>12     A I really don't know because I had very</p> <p>13 little dealings with the payment of loans from</p> <p>14 Mr. Ortenzio through my whole relationship at CCI.</p> <p>15          This was the first time Mr. Ortenzio had</p> <p>16 made a loan payment that I am aware of.</p> <p>17     Q Well, why do you say you had no relationship</p> <p>18 with respect to repayment of the loan?</p> <p>19     A I said contact.</p> <p>20     Q Contact.</p> <p>21          Well, how would that be done?</p>	<p style="text-align: right;">Page 155</p> <p>1     Q Okay. When repayments were made by CCI on</p> <p>2 account of the equipment note or any other loan</p> <p>3 facility, how did they come in?</p> <p>4          Were they mailed in, or did Sheri Phillips</p> <p>5 hand-deliver them to you, or both?</p> <p>6     A No payments ever came directly to me.</p> <p>7     Q Okay. Where did they go?</p> <p>8     A Either they were mailed in or delivered to a</p> <p>9 branch.</p> <p>10    Q Okay. Did -- how did you have a</p> <p>11 relationship with Sheri Phillips in regard to the</p> <p>12 repayment on CCI loans?</p> <p>13    A If there was ever a problem with the</p> <p>14 payment, that's who I would contact, her.</p> <p>15    Q Was there ever a problem?</p> <p>16    A I don't recall.</p> <p>17    Q Okay. So how else would you have a</p> <p>18 relationship with her in connection with repayment,</p> <p>19 other than if there was a problem that you don't</p> <p>20 recall there ever being a problem?</p> <p>21    A If she had a question on the, on the bill,</p>
<p style="text-align: right;">Page 154</p> <p>1     A I -- I dealt with Sheri Phillips --</p> <p>2     Q Okay.</p> <p>3     A -- on the loan.</p> <p>4     Q And would she bring checks in, or --</p> <p>5     A No.</p> <p>6     Q -- how did it work? What happened?</p> <p>7     A They would mail the checks.</p> <p>8     Q Okay. Well, how -- why did you say you</p> <p>9 dealt with Sheri Phillips, then, if the checks were</p> <p>10 mailed?</p> <p>11          Were there letters that were signed by her</p> <p>12 or what?</p> <p>13     A I dealt with Sheri Phillips as far as the</p> <p>14 banking relationship.</p> <p>15          I didn't specifically say the, the payments.</p> <p>16     Q Well, you said you didn't have any</p> <p>17 relationship with Mr. Ortenzio in regard to repayments</p> <p>18 of loans, you dealt with Sheri Phillips.</p> <p>19          So my question is -- is that correct, or do</p> <p>20 you want to change your answer?</p> <p>21     A That's okay.</p>	<p style="text-align: right;">Page 156</p> <p>1     she would call. When --</p> <p>2     Q Sticking to the repayment.</p> <p>3     A When we set up the repayment, she would --</p> <p>4 we would discuss what the repayment was going to be</p> <p>5 on, on the loan.</p> <p>6     Q You never had similar conversations with</p> <p>7 Mr. Ortenzio?</p> <p>8     A No.</p> <p>9     Q Okay. Would you look at No. 17,</p> <p>10 Paragraph 17, in the Complaint?</p> <p>11    A Okay.</p> <p>12    Q Do you agree with that allegation?</p> <p>13    A Yes.</p> <p>14    Q Would you tell me what is meant by a</p> <p>15 conditional payment?</p> <p>16          MR. GEBHARDT: Objection.</p> <p>17          That is -- why don't you go out of the</p> <p>18 room while I put this on the record.</p> <p>19          MR. SWICHAR: I'll -- I'll change the</p> <p>20 question.</p> <p>21          That's okay, I'll withdraw the</p>

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<p style="text-align: right;">Page 157</p> <p>1 question; save time.</p> <p>2 Q (By Mr. Swichar) Are you aware of any facts 3 that made the payment conditional as alleged in 4 Paragraph 7?</p> <p>5 A No.</p> <p>6 Q Am I correct, sir, that both the 1.2 million 7 dollar note and the four million dollar note and the 8 1.2 million dollar surety have default provisions?</p> <p>9 A Yes.</p> <p>10 Q In any of those three documents, and 11 including the loan commitment letter, is there any 12 prohibition, or does it make an event of default by 13 paying the 1.2 million dollar loan off by utilizing 14 the four million dollar line of credit?</p> <p>15 MR. GEBHARDT: Objection to the use of 16 the compound question.</p> <p>17 Prohibition and event of default, 18 they're two separate --</p> <p>19 MR. SWICHAR: I'll strike the 20 prohibition.</p> <p>21 Q (By Mr. Swichar) In any of those documents,</p>	<p style="text-align: right;">Page 159</p> <p>1 dollar note cannot be paid off unless the four million 2 dollar note is paid off first?</p> <p>3 A No.</p> <p>4 Q Are you aware of any banking practice, 5 custom, or regulation that would act as an impediment 6 to the bank stating in any loan document that the 7 1.2 million dollar note could not be paid off until -- 8 unless and until the four million dollar note is paid 9 off first?</p> <p>10 A I am not aware of any.</p> <p>11 Q Are you aware of any banking practice, rule, 12 or regulation or other impediment that would have 13 prohibited the bank from requiring a guarantee of the 14 last one million dollars in CCI's indebtedness, 15 whether it be the four million dollar line or the 16 1.2 million dollar note, or the two million dollar 17 equipment loan?</p> <p>18 A I am not aware of any.</p> <p>19 Q Are you aware of any banking regulation, 20 policy, or rule or regulation or other impediment 21 which would have prevented the bank from stating that</p>
<p style="text-align: right;">Page 158</p> <p>1 does it state that there is an event of default by 2 paying the 1.2 million dollar note off by utilizing 3 the four million dollar line of credit?</p> <p>4 A Not in the documents you mentioned.</p> <p>5 Q I mentioned the 1.2 million dollar note, 6 correct?</p> <p>7 A Yes.</p> <p>8 Q I mentioned the four million dollar note, 9 correct?</p> <p>10 A Yes.</p> <p>11 Q I mentioned the loan commitment, and I 12 mentioned the two million dollar equipment note, or 13 I'll mention it now because I think that covers 14 everything.</p> <p>15 Do any of those four documents state that it 16 is an event of default to pay off the 1.2 million 17 dollar note with the four million dollar line of 18 credit?</p> <p>19 A No, they do not.</p> <p>20 Q Is there any document in this universe that 21 you're aware of that states that the 1.2 million</p>	<p style="text-align: right;">Page 160</p> <p>1 the 1.2 million dollar line had to be paid from funds 2 other than collected accounts receivable or other 3 business deposits of CCI?</p> <p>4 A I'm not aware of any.</p> <p>5 Q Now, when the 1.2 million dollar facility 6 was deposited in CCI's account, I think you testified 7 earlier that that would have had the financial impact 8 of decreasing the balance on the four million dollar 9 line of credit; is that correct?</p> <p>10 A Yes.</p> <p>11 Q And it would have also had the impact 12 financially of increasing the availability on the four 13 million dollar line of credit; is that correct?</p> <p>14 A Yes.</p> <p>15 Q And that would have occurred in November, 16 1999, if I recall correctly?</p> <p>17 A Yes.</p> <p>18 Q Now, when the 1.2 million dollar note was 19 repaid by drawing on the four million dollar line of 20 credit in February, 2000, that, in effect, reversed 21 that which had previously occurred when the</p>

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<p style="text-align: right;">Page 161</p> <p>1 1.2 million dollar loan was deposited in CCI's bank      2 account a few months earlier; is that correct?      3 MR. GEBHARDT: Objection.      4 A It increased the line.      5 Q It had the same impact; it reversed the      6 impact of what occurred earlier when the 1.2 million      7 dollar loan -- I could go through the numbers again,      8 but I don't think I have to, do I?      9 A No.      10 Q It really just reversed what had occurred      11 when the 1.2 million dollar loan had been granted and      12 deposited?      13 A It increased the outstanding on the four      14 million dollar line.      15 Q The answer to my question is yes, it was a      16 reversal?      17 A No, it wasn't a reversal. It increased the      18 outstanding on the line at that time.      19 Q Okay. At any time in the history of CCI's      20 relationship with the bank, did it ever exceed the      21 four million dollar cap?</p>	<p style="text-align: right;">Page 163</p> <p>1 MR. SWICHAR: How do I have them?      2 MR. GEBHARDT: Because you have with      3 Mr. Chernicoff, the same way --      4 MR. SWICHAR: I'm assuming that they're      5 out there somewhere. I just wanted to make sure if      6 there's anything else other than the checking account      7 statements.      8 Q (By Mr. Swichar) Would you look at      9 Paragraph 34 of the Complaint?      10 Let me know when you're done reading it.      11 (Witness reading.)      12 A Okay.      13 Q Did Mr. Ortenzio ever make any direct      14 representation to you that the 1.2 million dollar loan      15 facility would not be paid from the four million      16 dollar line of credit, it would come from other funds?      17 A No.      18 Q Are you familiar with the practice --      19 MR. SWICHAR: Let's stop for a minute.      20 (Discussion off the record.)      21 Q (By Mr. Swichar) Are you familiar in reading</p>
<p style="text-align: right;">Page 162</p> <p>1 A I don't recall.      2 Q Okay. Are there documents -- and I know      3 your attorney will say I got them, but I don't think I      4 did -- that would show me if deposits that were made      5 by CCI to its checking account for, let's say the      6 months prior to the closing of the account, February,      7 2000?      8 A Are there --      9 Q Documents that reflect deposits made, the      10 amount of deposits made.      11 A Their checking accounts.      12 Q Their checking account statements?      13 A Checking account statements.      14 Q And the bank would have copies of those      15 documents as well?      16 A Yes.      17 Q Okay.      18 MR. GEBHARDT: As do you.      19 MR. SWICHAR: Pardon me?      20 MR. GEBHARDT: As do you.      21 As do you.</p>	<p style="text-align: right;">Page 164</p> <p>1 the Complaint, do you recall that as part of the      2 Complaint there was a preference action that's been      3 filed against the bank by the debtor, CCI?      4 A I am aware of that.      5 Q Okay. And are you aware that this lawsuit      6 against Mr. Ortenzio seeks indemnification of the      7 preference in the event the bank is required to      8 reimburse CCI of that preference claim?      9 MR. GEBHARDT: That's not an accurate      10 statement.      11 Q Are you aware that the bank --      12 MR. SWICHAR: I never could figure out      13 that part of the Complaint.      14 MR. GEBHARDT: Well, let me -- why      15 don't I because --      16 MR. SWICHAR: Why don't you do it.      17 MR. GEBHARDT: -- Mr. Burke had some      18 questions about that, too.      19 The maximum amount the bank is seeking      20 to recover is the 1.2 million dollars that was      21 guaranteed plus the costs of collection.</p>

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<p style="text-align: right;">Page 165</p> <p>1        Because of the three payments that came 2    in at or about the time of the default, the line of 3    credit was reduced so that the principal balance was 4    somewhere in the area of three hundred thousand 5    dollars.</p> <p>6        If those payments do not have to be 7    returned as preferences and are truly pay-downs of the 8    line of credit, then that's what the bank is seeking.</p> <p>9        But to the extent a preference recovery 10   is made, the bank intends to recover the amount of the 11   preference recovery up to a ceiling of the 1.2 million 12   dollars because that is the limit of the guarantee 13   that Mr. Ortenzio gave.</p> <p>14        MR. SWICHAR: Thank you.</p> <p>15        MR. GEBHARDT: So -- I mean, that's --</p> <p>16        MR. SWICHAR: I appreciate that.</p> <p>17        Q (By Mr. Swichar) Do you understand that?</p> <p>18        A Yes.</p> <p>19        Q Okay. Now, the payments that constitute the 20   preference payments constitute monies that were swept 21   from CCI's checking account to the bank, by and to the</p>	<p style="text-align: right;">Page 167</p> <p>1        MR. SWICHAR: I understand. I'm not 2    arguing about the preference aspects. 3        I'm only trying to figure out the 4    mechanism by which the monies went to the bank, and 5    that was via the sweep that the bank would make in 6    some fashion from the checking account of CCI to the, 7    to the bank. 8        The bank swept those monies out. 9        Whether it's in the routine ordinary course or 10   whatever, I don't care, but is that correct? 11        MR. GEBHARDT: I mean, I guess. 12        You know, I'm not quite sure what 13   you're asking, or what I'm doing here -- 14        MR. SWICHAR: It wasn't a situation 15   where Mr. Ortenzio or someone from CCI said -- 16        MR. GEBHARDT: Do it, no. 17        MR. SWICHAR: -- do it -- 18        MR. GEBHARDT: No. 19        MR. SWICHAR: -- here's the money, do 20   it? 21        MR. GEBHARDT: No.</p>
<p style="text-align: right;">Page 166</p> <p>1    bank; is that correct?</p> <p>2        MR. GEBHARDT: There were payments that 3    were sent in by customers directly and, in accordance 4    with the normal mechanisms, were applied against the 5    line.</p> <p>6        MR. SWICHAR: Okay, but those were 7    payments by CCI's customers and deposited in CCI's 8    checking account, correct?</p> <p>9        MR. GEBHARDT: Whatever the collection 10   account was.</p> <p>11        MR. SWICHAR: Yeah -- well, there was 12   only one checking account, so it would have gone into 13   the checking account; is that correct?</p> <p>14        MR. GEBHARDT: I guess that's how they 15   set it up.</p> <p>16        MR. SWICHAR: And the way the monies 17   went to the bank that constitute the alleged 18   preference payments is that the bank swept those 19   monies from the checking account of CCI to the bank.</p> <p>20        MR. GEBHARDT: That was done every day 21   during the entire relationship.</p>	<p style="text-align: right;">Page 168</p> <p>1        He had no part in it.</p> <p>2        MR. SWICHAR: Okay. He had no --</p> <p>3        MR. GEBHARDT: We're not contending he 4    had any part --</p> <p>5        MR. SWICHAR: Okay. The bank had no 6    part --</p> <p>7        MR. GEBHARDT: Mr. Ortenzio.</p> <p>8        MR. SWICHAR: -- I'm sorry --</p> <p>9        Mr. Ortenzio had no part in the payment of those 10   preference, alleged preference payments to the bank.</p> <p>11        MR. GEBHARDT: Other than --</p> <p>12        MR. SWICHAR: Other than it was his 13   checking account that was --</p> <p>14        MR. GEBHARDT: It was the company's 15   checking account that authorized that procedure.</p> <p>16        MR. SWICHAR: Okay.</p> <p>17        Q (By Mr. Swichar) Would you look at 18   Schwartz 14, Mr. Schwartz, which I'm about to give 19   you?</p> <p>20        I have one very simple question. Were you 21   involved in the preparation of S-14, which is an</p>

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<p style="text-align: right;">Page 169</p> <p>1 Allfirst charge-off memo?</p> <p>2 A No.</p> <p>3 Q Do you know the reasons for the bank's 4 declaring the default on February 24?</p> <p>5 A No.</p> <p>6 Q Okay. I'll leave this out, save that for 7 Mr. Elias.</p> <p>8 If the bank had collected one million 9 dollars from its customers and deposited it in a rival 10 bank, in another bank, and you knew about that, what 11 would you have done?</p> <p>12 MR. GEBHARDT: If the bank had 13 collected --</p> <p>14 Q I'm sorry.</p> <p>15 If CCI had collected one million dollars 16 from its customers in the ordinary course and put it 17 in another bank and you found out about it, is that a 18 permissible or impermissible act?</p> <p>19 MR. GEBHARDT: Objection.</p> <p>20 A I don't think it was -- would -- could be 21 deemed as permissible or impermissible.</p>	<p style="text-align: right;">Page 171</p> <p>1 A The account where checks that they use to 2 conduct business --</p> <p>3 Q Right.</p> <p>4 A -- on a day-to-day basis --</p> <p>5 Q Right.</p> <p>6 A -- and their primary account would be the 7 one tied to cash management.</p> <p>8 If they have an account at another bank -- 9 customers do do that -- it wouldn't be a breach.</p> <p>10 Q Well, suppose they were collections from 11 customers, and they had an obligation such as the one 12 that CCI had and they put that money in another bank 13 and the borrower used it to buy an airplane.</p> <p>14 A I would inquire as to why they're doing 15 that.</p> <p>16 Q I'm using it to buy an airplane.</p> <p>17 A Why isn't the money coming back into the 18 business?</p> <p>19 Q Well, would you have considered that a 20 breach?</p> <p>21 A A breach --</p>
<p style="text-align: right;">Page 170</p> <p>1 I would have asked why, what the purpose 2 was.</p> <p>3 Q Well, I'm trying to figure out what the 4 intent of the obligation was where the bank -- where 5 CCI was required to make its primary business deposits 6 at Allfirst.</p> <p>7 So in that context, if CCI had said, well, I 8 have a million dollars in checks, I'm going to deposit 9 that money somewhere else, in another bank, would you 10 have considered that a breach of that obligation?</p> <p>11 A Yes.</p> <p>12 Can I rephrase that?</p> <p>13 Q Sure.</p> <p>14 A I don't think that was a breach.</p> <p>15 I would have inquired as to why they were 16 doing that. I mean, a lot of customers do have 17 accounts at other banks. Their operating account 18 where the transactions occur day-to-day --</p> <p>19 Q Is there a similar --</p> <p>20 A -- is meant by primary deposit account.</p> <p>21 Q I'm sorry, what?</p>	<p style="text-align: right;">Page 172</p> <p>1 Q In your view, a permissible act.</p> <p>2 MR. GEBHARDT: Objection.</p> <p>3 MR. SWICHAR: I'll withdraw the 4 question. It's a fair objection.</p> <p>5 Larry, are you -- I'm asking you 6 outright, and I almost hope the answer is yes -- are 7 you planning to use Mr. Schwartz as an expert at the 8 trial?</p> <p>9 I think I'm entitled to know that.</p> <p>10 MR. GEBHARDT: Well, as I mentioned, 11 depending on -- if you plan to have someone take the 12 stand that says, and testify as an expert, that it is 13 ordinary banking custom and practice to repay a 14 guaranteed loan facility with the proceeds of an 15 unsecured, unguaranteed line of credit in a situation 16 where the borrower is in default, I may ask 17 Mr. Schwartz if that's his understanding of banking 18 custom and practice, but I have no intention of 19 necessarily calling him in my case in chief as an 20 expert.</p> <p>21 Q (By Mr. Swichar) Mr. Schwartz, are you aware</p>

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<p style="text-align: right;">Page 173</p> <p>1 of any custom or practice in the banking industry that      2 requires a borrower to repay a guaranteed loan with      3 funds other than -- which prohibits a borrower from      4 repaying a guaranteed loan from a draw on a      5 nonguaranteed loan?</p> <p>6 MR. GEBHARDT: Objection.      7 Custom and practice is not a law.      8 MR. SWICHAR: Well, I'm using your      9 quote. I wrote it down when you said ordinary banking      10 custom and practice.      11 MR. GEBHARDT: Right, but you're saying      12 is there a custom and practice that prohibits.      13 MR. SWICHAR: Yes.      14 MR. GEBHARDT: Well, banking customs      15 and practices don't prohibit anything. They're not      16 law. They're how --      17 MR. SWICHAR: I'm asking -- I think the      18 whole banking custom or practice would be irrelevant      19 in this case, but you brought it up.      20 MR. GEBHARDT: It's your expert --      21 MR. SWICHAR: You said you may use him</p>	<p style="text-align: right;">Page 175</p> <p>1 EXAMINATION BY COUNSEL FOR THE PLAINTIFF      2 BY MR. GEBHARDT:      3 Q Mr. Schwartz, this particular four million      4 dollar line of credit was, as I think the testimony      5 has been and is reflected in the note, was tied to a      6 cash management facility, right?      7 A Yes.      8 Q And the cash management facility would kick      9 in basically at the end of each day, right?      10 A Yes.      11 Q And would I be correct that one would take      12 the total number of checks and deposits that came in      13 to the credit of CCI and then compare them to the      14 total number of checks that CCI had issued and that      15 were presented to the bank for payment on each day?      16 A Yes.      17 MR. SWICHAR: Well, I object because I      18 don't know if the computer made that comparison. I      19 think it works differently.      20 MR. GEBHARDT: Well, I'm asking the      21 witness.</p>
<p style="text-align: right;">Page 174</p> <p>1 for that purpose if I use him, so I'm --      2 MR. GEBHARDT: Your expert --      3 MR. SWICHAR: -- hypothetically asking      4 him the question.      5 Q (By Mr. Swichar) Are you aware of any      6 banking custom or practice which prohibits a borrower      7 from paying off a guaranteed loan from a loan that is      8 not guaranteed?      9 A Not to my recollection.      10 Q Okay. Would your answer change if I said to      11 you are you aware of any banking practice or custom      12 that prohibits a borrower from paying off a guaranteed      13 loan with -- from a nonguaranteed line of credit if it      14 is in financial distress?      15 MR. GEBHARDT: Objection.      16 A Not to my recollection.      17 Q All right.      18 MR. SWICHAR: Well, I'm done.      19 MR. GEBHARDT: I have some questions.      20 MR. SWICHAR: Sure.      21 ----</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. SWICHAR: Yeah, but you're telling      2 the witness.      3 So why don't you just ask him questions      4 how it works?      5 Q (By Mr. Gebhardt) If there was a greater      6 number of checks presented for payment than there were      7 deposits received, what would be the effect?      8 A A draw on the line of credit.      9 Q Suppose there was an excess of checks      10 received to the credit of CCI's account over items      11 presented for payment?      12 A A payment on the line of credit.      13 Q And suppose the line of credit had been      14 fully repaid?      15 A An investment would occur.      16 Q So there would be a positive balance in      17 CCI's account?      18 A Yes.      19 Q And what would happen -- would that positive      20 balance earn interest?      21 A Yes.</p>

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<p style="text-align: right;">Page 177</p> <p>1 Q And do you recollect whether under the terms 2 of the line of credit CCI was required to have the 3 line of credit at a zero balance for thirty 4 consecutive days in a twelve-month period?</p> <p>5 MR. SWICHAR: Could I hear that back? 6 (Question was read by the Reporter.)</p> <p>7 MR. SWICHAR: I don't understand the 8 question, but if your own witness does, fine.</p> <p>9 And if there is a document, why don't 10 you just show it to him?</p> <p>11 MR. GEBHARDT: Actually, I will 12 withdraw the question because the March 23rd, 1999, 13 commitment does not have that as a requirement, but 14 the preceding one did.</p> <p>15 So we're operating under what's been 16 designated Schwartz 12, so I will withdraw the 17 question.</p> <p>18 Q (By Mr. Gebhardt) Now, turning to Schwartz 19 Exhibit 12, which is the commitment letter for the 20 four million dollar revolving line of credit, what 21 were the proceeds of draws on the line of credit to be</p>	<p style="text-align: right;">Page 179</p> <p>1 I'm just objecting. 2 MR. GEBHARDT: Then object.</p> <p>3 Q (By Mr. Gebhardt) The line of credit was 4 intended to permit CCI to have funds available pending 5 the receipt of payment from customers on the accounts 6 receivable?</p> <p>7 A Yes.</p> <p>8 Q You were asked some questions relating to 9 the payment of the monthly installments on the two 10 million dollar equipment term loan.</p> <p>11 Do you recollect those?</p> <p>12 A Yes.</p> <p>13 Q And I think your testimony was that they 14 were made through the use of the revolving, four 15 million dollar revolving line of credit, right?</p> <p>16 A Yes.</p> <p>17 MR. SWICHAR: No, I don't think he said 18 that.</p> <p>19 I think he said the repayments were 20 made either through checks or automatic, and then we 21 went to the next step, which was the impact of it.</p>
<p style="text-align: right;">Page 178</p> <p>1 used to do?</p> <p>2 A Finance work in process and accounts 3 receivable.</p> <p>4 Q Is repaying in full any fully funded loan or 5 credit facility an authorized use of loan proceeds?</p> <p>6 MR. SWICHAR: I object to the form of 7 the question.</p> <p>8 Q You may answer.</p> <p>9 THE WITNESS: Read it back, please. (Question was read by the Reporter.)</p> <p>10 MR. SWICHAR: I object to the form, 11 particularly the word authorized.</p> <p>12 A No.</p> <p>13 Q (By Mr. Gebhardt) Okay. Now, what exactly 14 are accounts receivable?</p> <p>15 A Payments from customers of the borrower for 16 services rendered.</p> <p>17 Q Okay. And this line of credit was intended 18 to provide CCI with --</p> <p>19 MR. SWICHAR: Are you just leading him 20 down?</p>	<p style="text-align: right;">Page 180</p> <p>1 Q Was making the monthly installments of 2 principal and interest on the equipment term loan an 3 authorized use of the four million dollar revolving 4 line of credit?</p> <p>5 A Yes.</p> <p>6 Q Why is that?</p> <p>7 A Because a term loan is to be repaid, of 8 course, over a period of time, monthly, and through 9 profits of the company, and those profits are a part 10 of the receivables that they come in. So that line is 11 used because that -- the profits are in -- a part of 12 the accounts receivable, and the line gets paid down 13 that way.</p> <p>14 (Gerard L. Elias entered the conference 15 room.)</p> <p>16 Q Had there been no term loan from CCI -- 17 no -- excuse me, let me rephrase that.</p> <p>18 Assume there had been no four million dollar 19 line of credit, what would the source of payment have 20 been for CCI to repay the monthly installments of 21 principal and interest on the two million dollar</p>

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<p style="text-align: right;">Page 181</p> <p>1 equipment loan?</p> <p>2 MR. SWICHAR: Objection as to form.</p> <p>3 A Excess cash flow.</p> <p>4 Q Where would that come from?</p> <p>5 A The collection of accounts receivable.</p> <p>6 Q Okay. Now, when the 1.2 million dollar loan</p> <p>7 was paid off on February 11, 2000, with a draw on the</p> <p>8 four million dollar revolving line of credit, I</p> <p>9 believe the testimony has been that a check was</p> <p>10 delivered by Mr. Ortenzio to make that payment.</p> <p>11 Does that accord with your recollection?</p> <p>12 A Yes.</p> <p>13 Q Was that payment delivered directly to you?</p> <p>14 A No.</p> <p>15 Q Were you at any time ever told by anyone at</p> <p>16 or about February 11, 2000, that that check</p> <p>17 represented a draw on the four million dollar</p> <p>18 revolving line of credit?</p> <p>19 A No.</p> <p>20 Q Had you known on or about February 11, 2000,</p> <p>21 that the check presented by Mr. Ortenzio on behalf of</p>	<p style="text-align: right;">Page 183</p> <p>1 because the cash flow situation of the company was in</p> <p>2 a depo -- disposition.</p> <p>3 Q Did Mr. Ortenzio express at all how long he</p> <p>4 believed that cash flow problem would continue?</p> <p>5 A I believe some cash flow projections given</p> <p>6 to us indicated February, through the end of February.</p> <p>7 Q And from what source based on your</p> <p>8 discussions with Mr. Ortenzio in November of 1999 did</p> <p>9 you anticipate the 1.2 million dollar loan being</p> <p>10 repaid?</p> <p>11 A Excess cash flow.</p> <p>12 Q Okay. And based on Mr. Ortenzio's</p> <p>13 discussions, did you expect that excess cash flow to</p> <p>14 put CCI in a positive cash position?</p> <p>15 A Yes.</p> <p>16 Q And would you have expected at the time of</p> <p>17 the 1.2 million --</p> <p>18 MR. SWICHAR: Object to all these</p> <p>19 leading questions.</p> <p>20 MR. GEBHARDT: That's fine.</p> <p>21 Q (By Mr. Gebhardt) Would you have expected</p>
<p style="text-align: right;">Page 182</p> <p>1 CCI represented a draw on the four million dollar</p> <p>2 revolving line of credit, what action, if any, would</p> <p>3 you have taken?</p> <p>4 A I would have not honored the check.</p> <p>5 Q If Mr. Ortenzio had called you prior to</p> <p>6 bringing the check in and expressly stated that he</p> <p>7 intended to pay the 1.2 million dollar loan with a</p> <p>8 draw on the four million dollar revolving line of</p> <p>9 credit, what would your response to Mr. Ortenzio have</p> <p>10 been?</p> <p>11 MR. SWICHAR: Objection to form.</p> <p>12 A No, don't bother, or why are you paying it</p> <p>13 off with the line?</p> <p>14 Q Now, when the --</p> <p>15 MR. SWICHAR: Do you want the answer to</p> <p>16 that?</p> <p>17 Q When the 1.2 million dollar line of</p> <p>18 credit -- excuse me -- when the 1.2 million dollar</p> <p>19 loan was discussed, what did Mr. Ortenzio tell you was</p> <p>20 the reason CCI needed that advance of funds?</p> <p>21 A They needed the money to keep operating</p>	<p style="text-align: right;">Page 184</p> <p>1 the 1.2 million dollar loan had it been repaid from</p> <p>2 the excess cash flow for there to have been a positive</p> <p>3 balance on the four million dollar revolving line of</p> <p>4 credit?</p> <p>5 A I would have expected the line to have a</p> <p>6 zero balance.</p> <p>7 Q Now, you were asked --</p> <p>8 MR. SWICHAR: Wait.</p> <p>9 Can I hear that question and answer</p> <p>10 back again?</p> <p>11 (Record was read by the Reporter.)</p> <p>12 Q (By Mr. Gebhardt) Now, I believe the</p> <p>13 documents establish based on the commitment letters</p> <p>14 that the 1.2 million dollar loan was to be due on</p> <p>15 March 31, 2000, if not demanded sooner, and that the</p> <p>16 four million dollar line of credit expired on</p> <p>17 April 30, 2000.</p> <p>18 What was your anticipation of what would</p> <p>19 occur had CCI Construction not had sufficient cash</p> <p>20 flow to repay the 1.2 million dollar loan by March 31,</p> <p>21 2000?</p>

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<p style="text-align: right;">Page 185</p> <p>1           MR. SWICHAR: Same objection; both 2 leading and speculative.</p> <p>3           A We would have reviewed the situation and 4 determined what our further action would be at that 5 time.</p> <p>6           Q And what kind of further actions or options 7 would have been available to the bank at that time?</p> <p>8           MR. SWICHAR: Same objections.</p> <p>9           A Additional collateral, restructure of the 10 debt.</p> <p>11          Q Okay. Now, you were asked some questions 12 about material adverse change in the financial 13 circumstances of CCI.</p> <p>14          In February of 19 -- or excuse me -- in 15 February of 2000, would you as CCI's account officer 16 have regarded a six million dollar loss for the fiscal 17 year ending December 31, 1999, to have been a material 18 adverse change in CCI's financial situation?</p> <p>19          A Yes.</p> <p>20          Q Would you have regarded a million dollar 21 negative shareholder equity as of December 31, 1999,</p>	<p style="text-align: right;">Page 187</p> <p>1           Q You may answer.</p> <p>2           A Yes, I believe it does.</p> <p>3           MR. SWICHAR: Do you want to point to 4 that provision while we're at it?</p> <p>5           MR. GEBHARDT: You've got these in the 6 Complaint, don't you?</p> <p>7           MR. SWICHAR: Okay, let's go on. I'll 8 accept it.</p> <p>9           I'll accept it, Larry.</p> <p>10          Q (By Mr. Gebhardt) Why don't you read it out 11 verbally, Mr. Schwartz?</p> <p>12          I think it's --</p> <p>13          MR. SWICHAR: It goes down to G.</p> <p>14          MR. GEBHARDT: Exactly.</p> <p>15          Q (By Mr. Gebhardt) Material adverse change in 16 the financial condition of the borrower or the 17 undersigned.</p> <p>18          And would I be correct that carrying down on 19 the page there's an authorization for the bank in its 20 sole discretion without notice to collect the 21 guaranteed sums directly from the person giving the</p>
<p style="text-align: right;">Page 186</p> <p>1 as being a material adverse change in CCI's financial 2 circumstances?</p> <p>3           A Yes.</p> <p>4           Q Okay. Do you know whether the suretyship -- 5 do you know whether the 1.2 million dollar promissory 6 note contained a material adverse change default 7 provision?</p> <p>8           MR. SWICHAR: Objection to form; speaks 9 for itself.</p> <p>10          A Yes, I believe it does.</p> <p>11          Q Okay. If you would like to, take a look at 12 Mr. Ortenzio's suretyship document, suretyship 13 guarantee.</p> <p>14          Do you have that in front of you -- okay, 15 it's an exhibit.</p> <p>16          Do you know whether the suretyship provided 17 that Mr. Ortenzio would be in default if there was a 18 material adverse change in the financial circumstances 19 of CCI?</p> <p>20          MR. SWICHAR: Objection as to form; the 21 document speaks for itself.</p>	<p style="text-align: right;">Page 188</p> <p>1 suretyship, and that's in the paragraph next to the 2 last from the bottom?</p> <p>3           A Yes.</p> <p>4           Q Now, if we assume that CCI had a six million 5 dollar loss for fiscal year 1999 and had a negative 6 shareholders equity of one million dollars, would you 7 have regarded there to have been a default under the 8 1.2 million dollar loan and Mr. Ortenzio's suretyship 9 at the time the check was presented in payment of that 10 obligation under -- by a draw on the four million 11 dollar line of credit?</p> <p>12          MR. SWICHAR: I object.</p> <p>13          Mr. Schwartz has already testified that 14 he was totally uninvolved in the default issues 15 involved in this case, but go ahead, answer it.</p> <p>16          Q If you had known -- if you had personally 17 known of the financial circumstances of CCI on 18 February 11, 2000, the day Mr. Ortenzio brought the 19 check in, would you have regarded at that moment 20 Mr. Ortenzio and CCI to have been in default?</p> <p>21          A Yes.</p>

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<p style="text-align: right;">Page 189</p> <p>1 Q Now, I think you indicated that you did not      2 know when you spoke with Mr. Ortenzio on or about      3 February 11 what the source of the payment might have      4 been that repaid the 1.2 million dollar loan.      5 A That's correct.      6 Q Do you know whether, based on your activity      7 as an account officer, whether Mr. Ortenzio had the      8 personal financial ability to have made that payment?      9 MR. SWICHAR: Objection as to form.      10 A Yes, I believe he did.      11 Q Did you know for a fact whether CCI had      12 accounts with any other banks at the time?      13 A I was not aware of any.      14 Q But did you know one way or the other?      15 A No.      16 Q Did you know whether CCI was into the line      17 of credit at the time the payment was made?      18 MR. SWICHAR: Objection.      19 I don't know what that means, into the      20 line of credit.      21 Q Had a positive balance on the line of credit</p>	<p style="text-align: right;">Page 191</p> <p>1 directly?      2 A Yes.      3 Q And was any sense of urgency expressed by      4 Mr. Ortenzio in the call requesting the return of the      5 suretyship?      6 A Yes, it would have had to be for me to go      7 through the process to get the surety back quicker      8 than the normal course of business.      9 MR. SWICHAR: That's not responsive.      10 I object to the answer, form of the      11 answer.      12 Q Did you take action to get it back quicker      13 than the normal ordinary process?      14 MR. SWICHAR: He testified he had no      15 recollection.      16 Objection.      17 Q You may answer.      18 A Yes, I have -- I did.      19 Q And why did you take that extra effort?      20 A Mr. Ortenzio's request.      21 Q You were also asked a couple questions about</p>
<p style="text-align: right;">Page 190</p> <p>1 at the time the 1.2 million dollar payment was made.      2 Did you know that on February 11?      3 A No, I did not.      4 Q Now, after you learned that the check had      5 come in, did you have any contact with Mr. Ortenzio      6 about the consequences of the payment having been      7 made?      8 In other words, why did you send this letter      9 that's been marked as S-13 to Mr. Ortenzio confirming      10 that the 1.2 million dollar line had about --      11 MR. SWICHAR: Objection as to form; the      12 letter says why he sent it.      13 Q That's 13.      14 Why did you send that letter, S-13?      15 MR. SWICHAR: Objection as to form.      16 It states on the letter why he was      17 sending it.      18 A As a follow-up to Mr. Ortenzio's request to      19 get his surety back because, because the loan was paid      20 in full.      21 Q Okay. Now, that was a request made to you</p>	<p style="text-align: right;">Page 192</p> <p>1 banking custom and practice.      2 Do you recollect that?      3 A Yes.      4 Q Do you know whether banking customs and      5 practice are binding law, enforceable --      6 MR. SWICHAR: Objection to the      7 question.      8 Q -- in courts?      9 A No, I do not.      10 Q Do you know whether banking customs and      11 practices constitute a prohibition upon borrower      12 conduct?      13 A No, I do not.      14 MR. GEBHARDT: No further questions.      15 MR. SWICHAR: Just a couple.      16 EXAMINATION BY COUNSEL FOR THE DEFENDANT      17 BY MR. SWICHAR:      18 Q Mr. Schwartz, you testified that the      19 repayment in full of the 1.2 million dollar loan was      20 not an authorized use of the four million dollar line      21 of credit; is that correct?</p>

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<p style="text-align: right;">Page 193</p> <p>1 A Yes.</p> <p>2 Q Is there any document anywhere in this world 3 that states specifically in regard to repayment in 4 contrast to use of the funds that the funds -- that 5 the four million dollar line could not be used to 6 repay the 1.2?</p> <p>7 A There's no documents that says it cannot be 8 used to repay it.</p> <p>9 Q Is there any -- would there have been any 10 impediment that you're aware of to the bank stating in 11 any document binding on Mr. -- binding on CCI or 12 Mr. Ortenzio to prohibit the four million dollar line 13 of credit to be used to repay the 1.2 million dollar 14 loan, such as we discussed earlier, a negative 15 covenant?</p> <p>16 A Other than the agreed-upon use of proceeds 17 of that four million dollar loan.</p> <p>18 Q Right, right.</p> <p>19 Is there any impediment to the bank 20 expressly stating as a negative covenant that the four 21 million dollar line of credit could not used to repay</p>	<p style="text-align: right;">Page 195</p> <p>1 reason --</p> <p>2 MR. SWICHAR: I'll ask another 3 question.</p> <p>4 Q (By Mr. Swichar) Are you aware of any 5 impediment that prevented the bank from stating in any 6 document binding on CCI or Mr. Ortenzio that the 7 1.2 million dollar loan could only be repaid from 8 excess cash flow or profits?</p> <p>9 A No.</p> <p>10 Q You testified with respect to the equipment 11 note that that was a term loan; is that correct?</p> <p>12 A Yes.</p> <p>13 Q Is that different than the 1.2 million 14 dollar loan?</p> <p>15 A Yes.</p> <p>16 Q Okay, because payments were to be made 17 monthly?</p> <p>18 A The whole nature of the transaction was 19 different.</p> <p>20 Q The equipment note?</p> <p>21 A Yes.</p>
<p style="text-align: right;">Page 194</p> <p>1 the 1.2 million dollar loan?</p> <p>2 A No.</p> <p>3 Q The answer's no?</p> <p>4 A No.</p> <p>5 Q How was CCI to repay the 1.2 million dollar 6 loan?</p> <p>7 A From excess cash flow.</p> <p>8 Q And I think we -- I asked you earlier, but 9 correct me if I'm wrong, since Mr. Gebhardt asked, 10 touched on that, where is that in any document?</p> <p>11 A I don't believe it's in a document.</p> <p>12 Q Okay. Is there any reason or any impediment 13 to the bank not putting that in any document that this 14 loan could only be repaid from excess cash flow or 15 excess profits?</p> <p>16 MR. GEBHARDT: Let me object to, again, 17 the compound nature. Reason and impediment are two 18 different things.</p> <p>19 MR. SWICHAR: I'm using his word -- I 20 hear you.</p> <p>21 MR. GEBHARDT: You're asking is there a</p>	<p style="text-align: right;">Page 196</p> <p>1 Q Okay. You testified that payments on the 2 equipment note had to be repaid through profits of the 3 company, from collected accounts receivable, if I took 4 notes correctly; is that correct?</p> <p>5 A Yes.</p> <p>6 Q Is that stated anywhere in the equipment 7 note or any related document?</p> <p>8 In other words, limiting the monies that can 9 be used to repay the equipment note.</p> <p>10 A Not that I'm aware of.</p> <p>11 Q You testified when the 1.2 million dollar 12 note was repaid on February 11 you were not aware that 13 the payment had been made from a draw on the four 14 million dollar line of credit; is that correct?</p> <p>15 A Yes.</p> <p>16 Q That information was readily available to 17 you, was it not?</p> <p>18 A Within a day or so.</p> <p>19 Q Within a day or so?</p> <p>20 A Yes.</p> <p>21 Q Wouldn't that information have been on your</p>

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<p style="text-align: right;">Page 197</p> <p>1 computer?</p> <p>2 A Not until the payment actually gets posted.</p> <p>3 Q Okay. The next day?</p> <p>4 A Possibly.</p> <p>5 Q Okay. Certainly before the note was</p> <p>6 returned?</p> <p>7 A Yes.</p> <p>8 Q And marked satisfied?</p> <p>9 A Yes.</p> <p>10 Q You had the opportunity to learn the source</p> <p>11 of payment?</p> <p>12 A The note was not returned.</p> <p>13 Q The note, the guarantee, the suretyship.</p> <p>14 A Yes.</p> <p>15 Q Prior to your delivery of the guarantee</p> <p>16 marking it paid, you had the opportunity to determine</p> <p>17 the source of the money, is that correct -- source of</p> <p>18 the payment -- is that correct?</p> <p>19 A Yes.</p> <p>20 Q And you never inquired as to the source of</p> <p>21 the money -- source of the repayment of the</p>	<p style="text-align: right;">Page 199</p> <p>1 A Yes.</p> <p>2 Q Okay. You didn't do either, did you?</p> <p>3 A No.</p> <p>4 Q If you had cared, you would have done it?</p> <p>5 MR. GEBHARDT: Objection.</p> <p>6 A Most likely.</p> <p>7 Q The fact is when the 1.2 million dollar note</p> <p>8 was repaid, you were just happy to see that it was</p> <p>9 repaid, weren't you?</p> <p>10 A I don't think I'd put it in those words.</p> <p>11 Q Were you glad or sad --</p> <p>12 A When I get --</p> <p>13 Q -- or something in between?</p> <p>14 A When I receive payment, I'm always --</p> <p>15 Q Grateful?</p> <p>16 A Yes.</p> <p>17 Q Okay. Now, Mr. Ortenzio told you you said</p> <p>18 in November, 1999, that he required the 1.2 million</p> <p>19 through the end of February, 2000; is that correct?</p> <p>20 That's what you stated when your attorney</p> <p>21 asked you.</p>
<p style="text-align: right;">Page 198</p> <p>1 1.2 million dollar loan; is that correct?</p> <p>2 A Yes.</p> <p>3 Q And, again, where did you think the money</p> <p>4 came from?</p> <p>5 And I think your earlier answer was you</p> <p>6 didn't know, you didn't care; is that correct?</p> <p>7 MR. GEBHARDT: Objection to the</p> <p>8 characterizing of the witness' earlier testimony.</p> <p>9 A I didn't know where the money came from.</p> <p>10 Q Well, you didn't ask, did you?</p> <p>11 A No, I did not.</p> <p>12 Q And, therefore, you didn't care, did you?</p> <p>13 MR. GEBHARDT: Objection.</p> <p>14 Q If you had cared, you would have asked; is</p> <p>15 that right?</p> <p>16 A I didn't have the opportunity to speak to</p> <p>17 Mr. Ortenzio.</p> <p>18 Q You could have called him on the phone?</p> <p>19 A I -- that's correct.</p> <p>20 Q Could have gone over to CCI and knocked on</p> <p>21 the door and asked him?</p>	<p style="text-align: right;">Page 200</p> <p>1 A Okay.</p> <p>2 Q Is that correct?</p> <p>3 A That was --</p> <p>4 Q You said they would need the money, the</p> <p>5 extra money, the 1.2 million, through the end of</p> <p>6 February, 2000.</p> <p>7 A That was according to the cash flow</p> <p>8 statements.</p> <p>9 Q And that's what Mr. Ortenzio told you,</p> <p>10 right?</p> <p>11 A Yes.</p> <p>12 Q Okay. Now, at the time of the repayment of</p> <p>13 the 1.2 million coincidentally in February, 2000, the</p> <p>14 balance on the four million dollar line of credit</p> <p>15 allowed for the repayment of the 1.2 from the four</p> <p>16 million; is that correct?</p> <p>17 MR. GEBHARDT: Objection.</p> <p>18 Q There was sufficient cushion there under the</p> <p>19 four million dollar line of credit to repay the 1.2;</p> <p>20 is that correct?</p> <p>21 We went over the numbers.</p>

## Craig J. Schwartz

<p style="text-align: right;">Page 201</p> <p>1 A Yes.</p> <p>2 Q If you want, we can do it again.</p> <p>3 Am I correct?</p> <p>4 A Yes.</p> <p>5 Q There was sufficient money, substantially --</p> <p>6 A There was availability on the line of credit.</p> <p>7 Q Yes.</p> <p>8 And how much was that availability?</p> <p>9 It was greater than the 1.2 million, wasn't it?</p> <p>10 A Yes.</p> <p>11 Q We went over the numbers earlier.</p> <p>12 It was more than the 1.2 million; is that correct?</p> <p>13 A Yes.</p> <p>14 Q Okay. You expected excess cash flow to repay the 1.2 million dollar note; is that what you said earlier?</p> <p>15 A Yes.</p> <p>16 Q Is that documented in any document signed by</p>	<p style="text-align: right;">Page 203</p> <p>1 generated, not something Ortenzio gave him?</p> <p>2 MR. SWICHAR: Yes, exactly right.</p> <p>3 Q (By Mr. Swichar) Is there any document signed and made binding on Mr. Ortenzio or CCI that limited the repayment of the 1.2 million dollar note from excess cash flow?</p> <p>4 A No.</p> <p>5 Q Now, your attorney asked you a number of questions regarding a material adverse situation; would you have done this, if you had done that, if you had known that --</p> <p>6 MR. GEBHARDT: Adverse change.</p> <p>7 Q -- material adverse change.</p> <p>8 MR. SWICHAR: Off the record.</p> <p>9 (Discussion off the record.)</p> <p>10 Q (By Mr. Swichar) You were asked a lot of hypothetical questions about what you would have done had you known this, this, or that involving a material adverse change.</p> <p>11 The fact is that the bank, no one even bothered to consult with you as the loan officer who</p>
<p style="text-align: right;">Page 202</p> <p>1 Mr. Ortenzio or CCI?</p> <p>2 A That was -- no, that was based on the, the cash flow pro formas that were given to the bank.</p> <p>3 Q Did you hear my question?</p> <p>4 My question was is there --</p> <p>5 MR. GEBHARDT: Well, he answered your question.</p> <p>6 Q My question is, is there any document signed by CCI or Mr. Ortenzio in which it was stated that the 1.2 million dollar note would be paid from excess cash flow?</p> <p>7 MR. GEBHARDT: He answered the question.</p> <p>8 The cash flow statements they gave him -- he gave him.</p> <p>9 MR. SWICHAR: I'm saying any document signed --</p> <p>10 MR. GEBHARDT: Are you saying a loan document?</p> <p>11 MR. SWICHAR: Yes, any loan document.</p> <p>12 MR. GEBHARDT: A loan document the bank</p>	<p style="text-align: right;">Page 204</p> <p>1 had the relationship with CCI; is that correct?</p> <p>2 A At what date --</p> <p>3 MR. GEBHARDT: Objection.</p> <p>4 A What date is this?</p> <p>5 Q Prior to the declaration of the default, you were never consulted as to whether or not a default should be declared on the basis of material adverse change or any other basis?</p> <p>6 MR. GEBHARDT: My questions didn't direct to that.</p> <p>7 It was February 11.</p> <p>8 MR. SWICHAR: Well, your question was -- your question was purely hypothetical. I'm bringing it back to the world of reality.</p> <p>9 MR. GEBHARDT: No, my question was if he had known the facts that were reflected on the financial statements that CCI had on February 11 --</p> <p>10 MR. SWICHAR: Okay.</p> <p>11 MR. GEBHARDT: -- at the time the payment was made, what would he -- and this was before Mr. Elias or anyone was brought in -- would he have</p>

51 (Pages 201 to 204)

**Craig J. Schwartz**

<p style="text-align: right;">Page 205</p> <p>1 regarded in terms of the default situation.</p> <p>2 Q (By Mr. Swichar) You were not aware of any</p> <p>3 of the actual facts prior to the declaration of</p> <p>4 default on the basis of material adverse change; is</p> <p>5 that correct?</p> <p>6 A No, that is not correct.</p> <p>7 I knew there was on the meeting of the 18th</p> <p>8 the following week that the company had lost six</p> <p>9 million dollars. Up to that point, I was under the</p> <p>10 impression that the loss was going to be between a</p> <p>11 million two and two million for the year.</p> <p>12 Q Okay. No one came to you and asked you for</p> <p>13 your input as to whether or not a default should be</p> <p>14 declared?</p> <p>15 MR. GEBHARDT: Objection.</p> <p>16 When?</p> <p>17 MR. SWICHAR: Prior to the declaration.</p> <p>18 Between the 18th of February --</p> <p>19 MR. GEBHARDT: He's already testified</p> <p>20 no.</p> <p>21 MR. SWICHAR: Well, thank you.</p>	<p style="text-align: right;">Page 207</p> <p>1 I mean, you got it right there for</p> <p>2 God's sake.</p> <p>3 Q In contrast to CCI.</p> <p>4 A No.</p> <p>5 MR. SWICHAR: Let's go outside.</p> <p>6 (Mr. Swichar and Mr. Ortenzio left the</p> <p>7 conference room and then returned.)</p> <p>8 MR. SWICHAR: Okay, have a good trip</p> <p>9 back.</p> <p>10 MR. GEBHARDT: I have a couple, couple</p> <p>11 follow-ups.</p> <p>12 EXAMINATION BY COUNSEL FOR THE PLAINTIFF</p> <p>13 BY MR. GEBHARDT:</p> <p>14 Q Mr. Schwartz, at the time the 1.2 million</p> <p>15 dollar loan was being discussed in November of 1999,</p> <p>16 if you had known that Mr. Ortenzio was going to repay</p> <p>17 that loan in the manner in which it was repaid, would</p> <p>18 you have recommended approval of that loan?</p> <p>19 A No.</p> <p>20 Q Okay. In your dealings with Mr. Ortenzio on</p> <p>21 behalf of the bank, did you expect him to deal</p>
<p style="text-align: right;">Page 206</p> <p>1 Q (By Mr. Swichar) Is that correct?</p> <p>2 A Yes.</p> <p>3 Q Okay.</p> <p>4 MR. GEBHARDT: Ask him again.</p> <p>5 MR. SWICHAR: That was the answer.</p> <p>6 Q (By Mr. Swichar) You testified that</p> <p>7 Mr. Ortenzio had the personal ability to repay the</p> <p>8 1.2 million dollar note from his own funds in contrast</p> <p>9 to the method by which it was actually paid.</p> <p>10 What is your basis on that?</p> <p>11 A The personal financial statement submitted</p> <p>12 to the bank.</p> <p>13 Q What was the date of that financial</p> <p>14 statement?</p> <p>15 A I don't recall.</p> <p>16 Q Was there any requirement in any loan</p> <p>17 document signed by CCI or Mr. Ortenzio that required</p> <p>18 him to repay the 1.2 million dollar CCI note from his</p> <p>19 personal funds?</p> <p>20 MR. GEBHARDT: How about the</p> <p>21 suretyship?</p>	<p style="text-align: right;">Page 208</p> <p>1 honestly and in good faith with the bank?</p> <p>2 A Yes.</p> <p>3 Q Do you regard his repaying the 1.2 million</p> <p>4 dollar loan with a draw on the four million dollar</p> <p>5 line of credit as an honest and good faith act on his</p> <p>6 part?</p> <p>7 MR. SWICHAR: Objection as to form.</p> <p>8 MR. GEBHARDT: Let me rephrase it.</p> <p>9 MR. SWICHAR: In contrast to taking</p> <p>10 advantage of the bank's own negligence?</p> <p>11 Q (By Mr. Gebhardt) How did you regard</p> <p>12 Mr. Ortenzio's act of repaying the 1.2 million dollar</p> <p>13 line -- loan -- with a draw on the four million dollar</p> <p>14 line in February of 1999?</p> <p>15 MR. SWICHAR: Can I hear it back,</p> <p>16 please?</p> <p>17 Q You may answer.</p> <p>18 MR. SWICHAR: I'd like to hear it back,</p> <p>19 please.</p> <p>20 MR. GEBHARDT: Well, he can answer, and</p> <p>21 then you can hear both the question and answer.</p>

## Craig J. Schwartz

<p style="text-align: right;">Page 209</p> <p>1           MR. SWICHAR: Well, I'd like to hear it 2 back. 3       Q (By Mr. Gebhardt) Go ahead. 4           MR. SWICHAR: Objection. 5           I'd like to hear it back. 6           MR. GEBHARDT: I'm entitled to have the 7 witness answer the question. 8           MR. SWICHAR: No, I'm entitled to have 9 the Court Reporter rephrase -- give me back the 10 question before it's answered. 11          Now, I don't want to argue about it. 12 I'd like to hear the question back. 13          MR. GEBHARDT: Listen to it so you can 14 give an answer after he's heard it. 15          MR. SWICHAR: Fair enough. 16          (Question was read by the Reporter.) 17          MR. SWICHAR: Objection as to form. 18       Q (By Mr. Gebhardt) In terms of -- 19          MR. SWICHAR: As -- as a judge? As a 20 policeman? As a fireman? Or what? 21          MR. GEBHARDT: Well, let me clarify</p>	<p style="text-align: right;">Page 211</p> <p>1 known that Mr. Ortenzio -- that CCI would have repaid 2 the 1.2 million dollar note out of the four million 3 dollar line of credit, you would not have recommended 4 approval of the note; is that correct? 5 Isn't that what you just said? 6       A Yes, yes. 7       Q Now, if you had known, looking back in 8 hindsight, that Mr. Ortenzio or Mr. -- or CCI would 9 have repaid the 1.2 million from the four million 10 dollar line of credit, would you have made an express 11 prohibition in the 1.2 million dollar note expressly 12 prohibiting CCI from repaying the 1.2 from the four 13 million dollar line of credit? 14          Would you have included an express 15 prohibition of that conduct? 16          MR. GEBHARDT: Objection. 17       A It's possible. 18       Q Would that have been the prudent thing to do 19 in hindsight to go back and say let's prevent this 20 from occurring by specifically prohibiting a repayment 21 of the 1.2 from the four million dollar line of</p>
<p style="text-align: right;">Page 210</p> <p>1       that. 2       Q (By Mr. Gebhardt) In terms of your 3 expectations that Mr. Ortenzio would act with honesty 4 and good faith, how did you regard the repayment of 5 the line -- the repayment of the 1.2 million dollar 6 loan with a draw on the four million dollar line in 7 February of 1999? 8       MR. SWICHAR: Objection as to form. 9       His expectations are irrelevant. 10 Expectations are based on the note. 11      Q You may answer. 12      A In light of what subsequently followed, a 13 little bold. 14      Q Okay. 15      MR. SWICHAR: That's a legal -- nice 16 legal term. 17      MR. GEBHARDT: No further questions. 18      MR. SWICHAR: One question. 19      EXAMINATION BY COUNSEL FOR THE DEFENDANT 20 BY MR. SWICHAR: 21      Q You stated, Mr. Schwartz, that if you had</p>	<p style="text-align: right;">Page 212</p> <p>1 credit, as a prudent banker? 2       A Yes. 3       MR. SWICHAR: No further questions. 4       MR. GEBHARDT: We're done. 5       (Thereupon, at 2:56 p.m., the 6 examination of the witness was concluded.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21</p>

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**Craig J. Schwartz**

1                             ACKNOWLEDGMENT OF DEPONENT  
2                             I, Craig J. Schwartz, do hereby acknowledge  
3 I have read and examined the foregoing pages of  
4 testimony, and the same is a true, correct and  
5 complete transcription of the testimony given by me,  
6 and any changes and/or corrections, if any, appear in  
7 the attached errata sheet signed by me.

**10 Date** Craig J. Schwartz

11  
12  
13  
14  
15  
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17  
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21

Page 21

1 CERTIFICATE OF NOTARY PUBLIC

2 I, Kathleen R. Turk, the officer before

3 whom the foregoing deposition was taken, do hereby  
4 certify that the witness whose testimony appears in  
5 the foregoing deposition was duly sworn by me; that  
6 the testimony of said witness was taken by me in  
7 stenotype and thereafter reduced to typewriting under  
8 my direction; that said deposition is a true record of  
9 the testimony given by said witness; that I am neither  
10 counsel for, related to, nor employed by any of the  
11 parties to the action in which this deposition was  
12 taken; and, further, that I am not a relative or  
13 employee of any attorney or counsel employed by the  
14 parties hereto, nor financially or otherwise  
15 interested in the outcome of the action.

19 My Commission Expires:  
20 March 1, 2003.  
21

1 February 20, 2002  
2 Mr. Lawrence J. Gebhardt  
Gebhardt & Smith, L.L.P.  
3 The World Trade Center  
401 East Pratt Street  
4 Ninth Floor  
Baltimore, MD 21202

5

6 Re: Allfirst Bank v. John M. Ortenzio  
Deposition of Craig J. Schwartz

7

8 Enclosed for review is your copy of the  
above-referenced deposition, which includes an  
9 Acknowledgment of Deponent. Please have the deponent  
read the copy of the transcript and sign the enclosed  
10 Acknowledgment of Deponent. Also enclosed is an  
errata sheet which the deponent should use to note  
11 corrections. The errata sheet(s) should be signed and dated by the deponent.

12

13 Maryland Rules stipulate that the deponent has thirty  
days in which to read and sign the transcript. After  
the deponent has reviewed the copy of the transcript,  
please return the Acknowledgment of Deponent and any  
14 errata sheets to our office at 401 E. Pratt Street,  
Suite 425, Baltimore, MD 21202. If you have any  
15 questions regarding this matter, please contact us.

16

17

18

19

20

21

1 ESQUIRE DEPOSITION SERVICES  
401 E. PRATT STREET  
2 SUITE 425  
BALTIMORE, MD 21202  
3 (410) 539-6398  
4 ERRATA SHEET

6 Case Name: Allfirst Bank v. John M. Ortenzio  
Witness Name: Craig J. Schwartz  
7 Deposition Date: February 15, 2002  
Job No.: 143249

		Reason For	
Page No.	Line No.	Correction	Correction

11

13

14

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11

17

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20

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**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

21

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

3 ALLFIRST BANK. :  
 4 PLAINTIFF : NO: 1:01-CV-786  
 VS :  
 JOHN M. ORTENZIO, :  
 DEFENDANT :  
 5

6 DEPOSITION OF: SHERI PHILLIPS  
 7 TAKEN BY: PLAINTIFF  
 8 BEFORE: HILLARY M. HAZLETT, REPORTER  
 NOTARY PUBLIC  
 9 DATE: MARCH 13, 2002, 10:43 A.M.  
 10 PLACE: ALLFIRST BANK BUILDING  
 213 MARKET STREET  
 14TH FLOOR  
 HARRISBURG, PENNSYLVANIA

13 APPEARANCES:  
 14 GEBHARDT & SMITH  
 BY: LAWRENCE J. GEBHARDT, ESQUIRE  
 16 FOR - PLAINTIFF  
 17 BLANK, ROME, COMISKY & McCUALEY, LLP  
 BY: EDWARD I. SWICHAR, ESQUIRE  
 18 FOR - DEFENDANT  
 19 HARTMAN, OSBORNE & JOYCE, P.C.  
 BY: MELINDA S. JOYCE, ESQUIRE  
 21 FOR - SHERI PHILLIPS  
 22 ALSO PRESENT:  
 23 JAMIN M. GIBSON  
 JOHN M. ORTENZIO

1 STIPULATION  
 2 It is hereby stipulated by and between  
 3 counsel for the respective parties that reading,  
 4 signing, sealing, and certification are waived; and  
 5 that all objections except as to the form of the  
 6 question are reserved to the time of the trial.  
 7  
 8 SHERI PHILLIPS, called as a witness, being  
 9 duly sworn, testified as follows:  
 10  
 11 DIRECT EXAMINATION  
 12  
 13 BY MR. GEBHARDT:  
 14 Q Would you let us know first your residence  
 15 and then your business addresses?  
 16 A Residence is 2837 North Front Street, Suite  
 17 302, Harrisburg, PA 17110.  
 18 Q And your business address?  
 19 A 515 North Office Building, Harrisburg, PA  
 20 17125.  
 21 Q And where are you presently employed?  
 22 A Commonwealth of Pennsylvania.  
 23 Q And what do you do for the Commonwealth of  
 24 Pennsylvania?  
 25 A I'm the Deputy Secretary of Administration

INDEX				
WITNESS				
FOR PLAINTIFF	DIRECT	CROSS	REDIRECT	RECROSS
Sheri Phillips	3	60	101	111
EXHIBITS				
DEPOSITION EXHIBIT NO.		MARKED		
1 - 3/23/1999 Letter		12		
2 - Film/cash Solutions		13		
3 - Audit Report		21		
4 - 10/26/1999 Inter-office Memorandum		24		
5 - 11/4/1999 Inter-office Memorandum		25		
6 - 11/5/1999 Letter		31		
7 - Commercial Loan Note		32		
8 - Income Statement		40		
9 - Balance Sheet		40		
10 - Cash Flow Projections		49		

1 and General Services.  
 2 Q How long have you had that position?  
 3 A Since July.  
 4 Q Prior to that time, where did you work?  
 5 A I did consulting for one company, and I  
 6 also worked with another company that was part-time  
 7 that I had helped start.  
 8 Q And at some point in time, you worked for a  
 9 company known as CCI Construction?  
 10 A That's correct.  
 11 Q And when did you leave CCI?  
 12 A It was -- I think my last day was around  
 13 May 5th, 2000.  
 14 Q And when did you begin working for CCI?  
 15 A In September of 1991.  
 16 Q Would you relate for me just briefly what  
 17 your positions with CCI were from September 1991  
 18 through the date you left in terms of a job  
 19 description and just a brief outline of what your  
 20 duties were?  
 21 A When I started, I worked for Dave Barber  
 22 and I was the controller. I think that was my title.  
 23 My titles changed kind of in between there. I was  
 24 responsible for the accounting, and I reported to  
 25 Dave. I think his title was chief financier at the

1 time.  
 2 I think Dave left around 1995. At that  
 3 point, I assumed his duties; and I was -- again, the  
 4 titles changed -- the chief financial officer. I was  
 5 responsible for managing the accounting department.

6 I was also responsible for obtaining the  
 7 financing for the company. Over time, I've  
 8 accumulated some other things, handling our IMS,  
 9 which is information management systems. It was kind  
 10 of a multitude of things.

11 Q In terms of overseeing the accounting  
 12 department for a time period -- let's focus kind of  
 13 on the 1999/2000 period. What kinds of things would  
 14 you do in terms of managing the accounting  
 15 department?

16 A In that time period, I -- actually, we had  
 17 someone leave. There was an accounting manager --  
 18 again, we changed titles in there -- slash,  
 19 controller. I forget her exact title. She was  
 20 responsible for the actual day-to-day management but  
 21 she had left -- I think that was around the fall of  
 22 '99. She was not replaced, so then I was responsible  
 23 for the day-to-day operations of overseeing everyone  
 24 in the accounting department.

25 Q How many people were there in the

5

1 adjustments that might be needed to be made, once  
 2 they were all final, I had a -- I had to give copies  
 3 to our bonding company and our bank; and one of them  
 4 was quarterly, one of them was monthly.

5 And I'd give copies to the president of the  
 6 company and the chief operating officer of the  
 7 company. At that point, I think maybe the senior VP  
 8 also got copies of them.

9 Q And the president was Mr. John Ortenzio?

10 A Yes.

11 Q And the chief operating officer was who?

12 A Shane Miller.

13 Q In the 1999/2000 time frame, was there any  
 14 instance when you did not convey monthly financial  
 15 statements -- internally-generated financial  
 16 statements to Mr. Ortenzio?

17 A Not that I recall.

18 Q Was it your practice at all to discuss the  
 19 substance and content of those financial statements  
 20 with Mr. Ortenzio after you had given him copies?

21 A Yes, it was.

22 Q Based on your observations of Mr. Ortenzio,  
 23 did he familiarize himself with the financial results  
 24 reflected in the internally-generated financial  
 25 statements?

6

1 accounting department in that 1999/2000 time frame,  
 2 roughly?

3 A I would say probably five to seven.

4 Q As part of the -- and again, staying within  
 5 the same period unless I tell you otherwise, let's  
 6 continue to focus on that period of 1999 to 2000.  
 7 What kinds of regular financial reports internally  
 8 did the CCI Construction Company generate?

9 A We would do an income statement, a balance  
 10 sheet, a trial balance, work in progress report, cash  
 11 flow reports, accounts receivable, accounts payable,  
 12 and then your normal things related to payroll and  
 13 your cash disbursements and cash receipts.

14 Q And then I would be correct that there was  
 15 an income statement, and as you've indicated, a  
 16 balance sheet and a cash flow. Were they generated  
 17 monthly?

18 A Yes.

19 Q And were they then -- were they first  
 20 presented to you for review from whoever in the  
 21 department was working on them?

22 A Yes, that's correct.

23 Q What would you do with them after you  
 24 received what your staff had generated?

25 A After I reviewed them, made any final

8

1 A I would say yes. I mean, we discussed  
 2 them.

3 Q Based on your discussions with him, he  
 4 appeared to understand what the financial results  
 5 were that were reflected on the statements?

6 A Yes.

7 Q Now, you've also indicated that you were  
 8 responsible for obtaining financing for the company?

9 A That's correct.

10 Q And during the period of time you were  
 11 there, the company's primary bank was initially  
 12 Dauphin Deposit, what ultimately became today  
 13 Allfirst Bank?

14 A That's correct.

15 Q What kinds of things did you do in terms of  
 16 obtaining financing for the company?

17 MS. JOYCE: Again, in the 1999/2000 time  
 18 frame or overall?

19 BY MR. GEBHARDT:

20 Q Well, did there come a period of time when  
 21 that function, obtaining financing for the company,  
 22 became one of your job aspects?

23 A When I first started, Dave Barber handled  
 24 that.

25 Q All right.

1       A I don't recall in prior years back in '91  
 2 if I was in the meeting or not. I think I might have  
 3 been, but Dave handled it at that point. After Dave  
 4 left, it became my responsibility.

5       Q What sort of things would you do in terms  
 6 of obtaining financing from banks?

7       A I would get quotes from more than one bank.  
 8 I don't know if I did that every year, but I talked  
 9 to other banks and got comparisons. I'd look at  
 10 interest rates and look at what is going on in the  
 11 market and talk to our bank and tell them where we  
 12 stood and negotiated a loan.

13      Q Would I be correct, during your period of  
 14 time at CCI, there was a revolving line of credit in  
 15 place with a bank?

16      A That's correct.

17      Q And that was initially Dauphin Deposit  
 18 which then became Allfirst Bank?

19      A As I recall, I think it was Dauphin right  
 20 from the beginning. There may have been another bank  
 21 that had loans years ago. I don't recall exactly,  
 22 but Dauphin and Allfirst was our bank.

23      Q And this was an unsecured line of credit?

24      A In the 1999/2000 year, that's correct.

25      That's correct. It may not have been the whole time

1       arranging the financing for the company?

2       A He did not have a very big involvement  
 3 initially. He got very involved when we started  
 4 having more financial problems at the end; but up  
 5 until the \$4 million line of credit, I negotiated  
 6 with the bank.

7       Q And so you would have been the person that  
 8 negotiated and got into place the \$4 million line of  
 9 credit?

10      A That's correct.

11      Q And would I be correct in saying that  
 12 Mr. Ortenzio was not very involved in obtaining the  
 13 \$4 million line of credit?

14      MS. JOYCE: I object to the form of  
 15 question, not very involved.

16      BY MR. GEBHARDT:

17      Q His involvement -- his more limited  
 18 involvement, as you've described it in your previous  
 19 answer, was pertaining to the \$4 million line of  
 20 credit also?

21      MR. SWICHAR: I object. Why don't you ask  
 22 her what was John's --

23      MR. GEBHARDT: All right.

24      BY MR. GEBHARDT:

25      Q What was John Ortenzio's involvement in

1       period.

2       Q And over the period of time that you were  
 3 with CCI, the line of credit increased, if my memory  
 4 is correct, somewhere around 600,000 to a million  
 5 dollars, ultimately up to \$4 million in 1999?

6       A It did increase to the 4 million. I don't  
 7 recall what the exact amount was. It did increase.

8       Q In terms of negotiating the line of credit,  
 9 was Mr. Ortenzio -- let me back that up.

10      In terms of negotiating the line of credit  
 11 once you took over the function of arranging the bank  
 12 financing, did Mr. Ortenzio involve himself?

13      MS. JOYCE: Let me interject. Are you  
 14 talking about a specific time frame?

15      BY MR. GEBHARDT:

16      Q Well, let's start in general. Once you  
 17 took over the function after the old CFO left --

18      MR. SWICHAR: Larry, 1995?

19      MR. GEBHARDT: Right.

20      THE WITNESS: In 1995 -- the question was,  
 21 Did he --

22      BY MR. GEBHARDT:

23      Q Let me rephrase it. Starting with the 1995  
 24 period and going forward, how much involvement did  
 25 Mr. Ortenzio have in your function in terms of

1       obtaining the \$4 million line of credit?

2       A He did not actually meet with the bank. I  
 3 met with the bank. He was aware what was going on  
 4 and talked to me about what I was doing, what my  
 5 plans were, what the amount of the loan was. So I  
 6 had spoken to him about that outside of the meeting  
 7 with the bank. But when I actually sat down with the  
 8 bank, he was not in those meetings as I recall.

9       Q What was the purpose to your understanding  
 10 as the CFO of the \$4 million line of credit?

11      A To cover the work in progress and cover our  
 12 cash flow needs as the receivables were coming in.

13      MR. GEBHARDT: Will you mark this as the  
 14 first deposition exhibit?

15      (3/23/1999 letter was marked as Deposition  
 16 Exhibit No. 1.)

17      BY MR. GEBHARDT:

18      Q I've handed you what has been marked as  
 19 Deposition Exhibit 1, which purports to be a letter  
 20 dated March 23rd, 1999, to you from Craig Schwartz on  
 21 the letterhead of the First National Bank of  
 22 Maryland, which is the predecessor name for Allfirst  
 23 Bank. Do you recognize your -- is that your  
 24 signature on the last page?

25      A Yes, it is.

1 Q And this would be a commitment letter for  
 2 the \$4 million line of credit we have been  
 3 discussing?  
 4 A Without reading it word for word, yes.  
 5 This looks like it.  
 6 Q And on the first page where there's a  
 7 statement, Use of Proceeds, is that use of proceeds  
 8 consistent with your understanding of the purpose of  
 9 the loan?  
 10 A Yes, it is.  
 11 Q Okay. Now, did you also -- if you look  
 12 down to the last paragraph, you'll see that there's a  
 13 date of April 30, 2000. What significance did you  
 14 understand that the April 30, 2000 date to have in  
 15 terms of the line of credit?  
 16 A As of April 30th of 2000, it expired; and  
 17 every year, we would have to renew it to go forward.  
 18 MR. GEBHARDT: Call this SP-1?  
 19 MR. GEBHARDT: Just Deposition Exhibit 1.  
 20 MR. SWICHAR: Call it SP-1.  
 21 MR. GEBHARDT: Let's do this one as 2.  
 22 (Film/cash solutions promissory note was  
 23 marked as Deposition Exhibit No. 2.)  
 24 BY MR. GEBHARDT:  
 25 Q I've handed you what has been marked as

13 1 Craig Schwartz about.  
 2 Q Did you talk to him about them before you  
 3 crossed them out and initialed them or after?  
 4 A Before.  
 5 Q And what was the result of your discussion  
 6 with Mr. Schwartz on those points?  
 7 A As I recall, he needed to -- he didn't  
 8 think it would be a problem; but he needed to verify  
 9 it first, and then he got back to me and said that  
 10 was fine and go ahead and make the notations and  
 11 initial them.  
 12 Q Did you discuss with Mr. Ortenzio any of  
 13 the phrases that you X'd out and initialed?  
 14 MS. JOYCE: Just those or the document in  
 15 general?  
 16 BY MR. GEBHARDT:  
 17 Q Well, let's focus specifically on the ones  
 18 you X'd out and initialed. Did you discuss any of  
 19 those with Mr. Ortenzio?  
 20 A Yes, I did.  
 21 Q Did you discuss all of them or just one or  
 22 two?  
 23 A As I recall, I discussed all of them  
 24 because there was one comment that I remember he  
 25 wanted me to put in there.

14 1 Deposition Exhibit No. 2. I would ask you if you  
 2 understand that exhibit to be a copy of the  
 3 promissory note evidencing the \$4 million line of  
 4 credit?  
 5 A Yes, this looks like the document.  
 6 Q And that is your signature on behalf of the  
 7 borrower on the signature page?  
 8 A Yes, it is.  
 9 Q Now, there are some initials and  
 10 line-throughs and so on, on the second and third  
 11 page. Would I be correct that those are your  
 12 initials and that you are the person who drew the  
 13 lines through?  
 14 A That's correct.  
 15 Q Could you tell me mechanically or in the  
 16 context of when and how you placed those marks on the  
 17 note?  
 18 A Whenever I received any document that we  
 19 had to sign on behalf of the company, I always  
 20 reviewed them in detail and looked to see if there  
 21 was anything in there that may not be to the  
 22 advantage of the company and that is part of what I  
 23 would look at in part of negotiating the loans.  
 24 Those are the things that I obviously  
 25 didn't like in the agreement and later talked to

16 1 Q And these were points that you raised with  
 2 him or he raised with you first?  
 3 A I raised them with him.  
 4 Q Now, was there a cash management feature  
 5 with the --  
 6 A Just back up a minute. I raised them with  
 7 him, but the one point he raised was with me.  
 8 Q What point was that?  
 9 A That within the 30 days there would be  
 10 notice as far as the repayment.  
 11 Q Was there a cash management feature that  
 12 accompanied or was attached or related to the --  
 13 MR. SWICHAR: Are you referring to  
 14 paragraph 6?  
 15 THE WITNESS: Yes.  
 16 MR. SWICHAR: Thanks.  
 17 BY MR. GEBHARDT:  
 18 Q Was there a cash management feature  
 19 associated with the line of credit?  
 20 A Yes, there was.  
 21 Q And what was your understanding of how that  
 22 cash management feature worked?  
 23 A We had the line of credit; and as checks  
 24 were drawn on our checking account, the money would  
 25 come from our line of credit to cover that. If there

1 was excess money, it would be invested and we would  
 2 get the income from it.

3 Q Hypothetically, if -- let me rephrase this.  
 4 How would customer payments in this 1999  
 5 period be made to CCI in relation to the cash  
 6 management feature?

7 MR. SWICHAR: May I hear the question back?

8 MS. JOYCE: And you're not talking  
 9 hypothetically as you started the last question,  
 10 correct?

11 MR. GEBHARDT: No. This is actually how  
 12 did customers pay CCI in the 1999 time frame.

13 MR. SWICHAR: I don't need it back.

14 THE WITNESS: It could have been one of two  
 15 ways: One, I would write a check; and we would  
 16 deposit it in the bank account; or two, as many as  
 17 possible had set up on a direct payment through a  
 18 wire transfer from their account into ours.

19 We did a lot of government work, and  
 20 sometimes it took forever to get it set up. Most of  
 21 them, pretty many of them I had set up on wire  
 22 transfers that would automatically go into our  
 23 account.

24 BY MR. GEBHARDT:

25 Q You set up as many as you could in that

17

1 excess.

2 Q And if there were more deposits than there  
 3 were checks written to pay bills, what would happen?

4 A They would sweep the account and invest the  
 5 money.

6 Q Would I be correct if there was an existing  
 7 outstanding balance on the line of credit, that  
 8 excess would pay down the line of credit?

9 MS. JOYCE: Object to the form of the  
 10 question. You may answer.

11 BY MR. GEBHARDT:

12 Q In other words, if there was an outstanding  
 13 balance on the line of credit of \$500,000 and CCI  
 14 wrote \$100,000 of checks that were presented on a  
 15 specific day but \$150,000 of payments came in from  
 16 customers, there would be an excess of \$50,000,  
 17 right, in the hypothetical?

18 What would happen under the cash management  
 19 feature to your understanding with that \$50,000?

20 A If there's excess deposits coming in, they  
 21 would pay down the line of credit.

22 Q And if there was no balance on the line of  
 23 credit at the time those excess deposits came in,  
 24 then they would create a positive balance on CCI's  
 25 bank account?

18

1 fashion?

2 A Yes.

3 Q And that carried through also the 2000  
 4 period as of the time you left?

5 A That's correct.

6 Q The wire transfer feature having the CCI  
 7 customer wire their payments directly to Allfirst is  
 8 something that benefited CCI?

9 A Most definitely.

10 Q If there had been an excess of deposits  
 11 over any outstanding balance on the line of credit  
 12 that would have given CCI a positive balance --

13 MR. SWICHAR: Objection to the form of the  
 14 question. I would first establish if there were ever  
 15 an excess.

16 MR. GEBHARDT: Well, let's trace --

17 MR. SWICHAR: Take it out of the world of  
 18 hypothetical.

19 BY MR. GEBHARDT:

20 Q In terms of how the cash management feature  
 21 worked, if there were less deposits on a given day  
 22 than there were checks that CCI had written to pay  
 23 bills, what would happen?

24 A If there were less deposits, we would draw  
 25 on the line of credit to pay the checks that were in

19

1 A Yes.

2 Q And CCI would gain interest on that?

3 A Yes. They would be swept and put into  
 4 purchasing.

5 Q As of the start or the first quarter of  
 6 calendar year 1999, CCI had -- let me actually  
 7 rephrase it.

8 As of the conclusion of calendar year 1999  
 9 -- in other words, December 31, 1999 -- CCI, in fact,  
 10 had four credit facilities or loans outstanding with  
 11 Allfirst, right?

12 MS. JOYCE: Object to the form of the  
 13 question. You can answer.

14 BY MR. GEBHARDT:

15 Q We have the 4 million --

16 A As I recall, there was a \$4 million line of  
 17 credit. There was a \$1.2 million line. There were  
 18 equipment loans. I don't remember how many we  
 19 aggregated together. I'm not sure how many equipment  
 20 loans there were, so I can't answer exact number.

21 Q Do you remember there being a \$2 million  
 22 equipment loan or line of credit financing of  
 23 equipment?

24 A Yes, I do.

25 Q Now --

21

1           MR. SWICHAR: Just a minute. You said  
2 four, and she said three. She provided three.

3           MR. GEBHARDT: She's correct. I'm  
4 incorrect.

5           MR. SWICHAR: I was waiting for her to  
6 correct you.

7 BY MR. GEBHARDT:

8           Q Let's make the record clear. There were  
9 actually the three credit facilities available as of  
10 December 31, 1999; namely, the \$4 million line of  
11 credit, the \$1,200,000 loan, and a \$2 million  
12 equipment loan or line of credit?

13          A And as I'm saying, as I recall, yes, I  
14 remember all those loans. I don't remember if we had  
15 any other small pieces of equipment financed  
16 separately; but yes, I remember all of those three.  
17 Those are the three main ones that I remember.

18          MR. GEBHARDT: Let's do this as the next  
19 exhibit.

20          (Audit report and financial statements for  
21 years ended December 31, 1998 and 1997 was marked as  
22 Deposition Exhibit No. 3.)

23 BY MR. GEBHARDT:

24          Q Okay. I've handed you what has been marked  
25 as Deposition Exhibit No. 3 which purports to be the

22

1           Q Over the course of time you were at CCI,  
2 were there times when the company had no borrowings  
3 under its line of credit?

4           A Yes, sir.

5           Q In fact, on some of the lines of credit,  
6 there was actually a requirement that CCI be out of  
7 the line of credit?

8           MR. SWICHAR: Can I hear that again?

9           (The reporter read back the referred-to  
10 portion of the record.)

11          MR. SWICHAR: My objection was, Was there a  
12 requirement? There's a document. That was my  
13 objection.

14 BY MR. GEBHARDT:

15          Q Do you recollect whether there in the lines  
16 of credit that were in existence over the period of  
17 time you were there from 1991 through 2000 whether  
18 there was customarily a feature that to those lines  
19 of credit that required CCI to have no borrowings  
20 for a 30 consecutive day period?

21          MR. SWICHAR: And I object to the form of  
22 the question because I don't know what you mean.

23          MR. GEBHARDT: You may answer.

24          MS. JOYCE: If you understand what he  
25 means, if you need clarification, you may request it.

23

1 audit report and financial statements of CCI  
2 Construction for the years ended December 31, 1998  
3 and 1997. Does that appear to be what this document  
4 is to you?

5           A Yes, it does.

6           Q Would I be correct, looking at the  
7 financial report that's been presented, that CCI did  
8 not lose money for the fiscal year 1998?

9           A That's correct.

10          Q And if you look at it, it's page 12 of the  
11 audited report, BATE stamp number at the bottom,  
12 C 7637, there's a Paragraph No. 6, Operating line of  
13 credit. The last sentence says, quote, The company  
14 has no outstanding balance on the line of credit at  
15 December 31, 1998, period, end quote.

16          Testing your memory, does that roughly  
17 accord with your recollection of the line of credit  
18 as of that year?

19          A I can't really answer that as a yes/no only  
20 because our line of credit was a constant revolving  
21 line. I do know at year end, we would hold writing  
22 checks if we could and get deposits in to try and  
23 have your financial statement look as healthy  
24 cashwise as possible. So that makes sense, but do I  
25 actually remember it? No.

24

1           THE WITNESS: During the course of the  
2 loans that we had with Allfirst, there were  
3 definitely times where there was a provision in the  
4 loan that said it had to be paid down for 30 days at  
5 certain points in time. Whether that was in the last  
6 loan, I don't recall.

7 BY MR. GEBHARDT:

8           Q Now, in fiscal year 1999, did CCI  
9 experience some financial reverses?

10          A Financial reverses? I'm sorry.

11          Q Did CCI experience some financial  
12 difficulties in 1999?

13          A Our profits started decreasing in -- yes,  
14 on our jobs. Yes, they did.

15          MR. GEBHARDT: Let's mark this as the next  
16 exhibit.

17          (10/26/1999 inter-office memorandum was  
18 marked as Deposition Exhibit No. 4.)

19 BY MR. GEBHARDT:

20          Q I've handed you Deposition Exhibit 4, which  
21 is a memorandum prepared by Craig Schwartz to  
22 evidence a meeting that he states he had with you and  
23 with John Ortenzio on or about October 26th, 1999.

24          Do you recollect having a meeting with  
25 Mr. Schwartz at the end of October of 1999?

25

1 A Yes, I do.

2 Q And do you remember -- what was the purpose  
3 of that meeting to your recollection apart from what  
4 Mr. Schwartz makes --

5 MR. SWICHAR: Just to clarify, I think you  
6 have the same -- do you have three copies of the  
7 identical document?

8 MR. GEBHARDT: It looks that way. Let's  
9 just tear the top one off.

10 BY MR. GEBHARDT:

11 Q What do you recollect had happened in that  
12 meeting?

13 A We had talked to, as I recall it, Mike  
14 Zarcone and John Schwartz and John and I in the  
15 meeting. As I recall, this was one of the first  
16 meetings that John was involved in with Allfirst. We  
17 had talked to them about getting an additional amount  
18 added to our line of credit because of some financial  
19 cash shortages we were having.

20 MR. GEBHARDT: Let's mark this as the next  
21 exhibit.

22 (11/4/1999 inter-office memorandum was  
23 marked as Deposition Exhibit No. 5.)

24 BY MR. GEBHARDT:

25 Q I've handed you Exhibit 5, which is another

1 be our loss. It would have been more like 5 and a  
2 half million.

3 So yes, the one and a half, I remember that  
4 discussion; but I did explain that it could be  
5 larger. It was based on us receiving that claim or  
6 change.

7 BY MR. GEBHARDT:

8 Q And the Albemarle Prison job was another  
9 problem job for CCI at this time?

10 MS. JOYCE: Objection to the form of the  
11 question. You may answer if you understand what he  
12 means by problem just so you're both on the same  
13 page.

14 THE WITNESS: As it's saying not as  
15 profitable, we were experiencing declining job  
16 profits until loss of Albemarle.

17 BY MR. GEBHARDT:

18 Q What was the -- these meetings, the one or  
19 the two that we're discussing, were they called by  
20 the representatives of Allfirst or by representatives  
21 of CCI?

22 A We called a meeting to get an additional  
23 loan. Now, if there were two, like I said, I'm  
24 remembering all the discussions as one specific  
25 meeting. But if there were actually two, they may

26

1 memorandum prepared by Craig Schwartz which appears  
2 to reflect, what, a meeting that was held on November  
3 4, 1999, in which Michael Zarcone met with you and  
4 Mr. Ortenzio?

5 Is it possible there were two meetings, one  
6 that Mr. Zarcone attended and one that he had not  
7 attended?

8 A That is possible. I recall everything  
9 being talked about in the same meeting, but it is  
10 possible it was two separate meetings.

11 Q Is it fair to say, as reflected in  
12 Mr. Schwartz's memorandum which is Exhibit No. 4,  
13 that for the 9-month period CCI had lost \$1.5  
14 million?

15 MS. JOYCE: Object to the form of the  
16 question. You may answer.

17 THE WITNESS: The 1.5 million -- I do  
18 remember in the meeting discussing our loss at that  
19 time, and the 1.5 was correct. I made sure that I  
20 had explained more than once in the meeting that  
21 Scott Air Force Base -- and it's noted in here a  
22 claim has been filed in the amount of \$4 million.

23 The 1.5 million was assuming we would get  
24 the \$4 million on the Scott Air Force Base claim. So  
25 if we did not get the 4 million, our loan would not

1 have called the first one. I know we called a  
2 meeting to talk to them about the additional loan.

3 Q What was the reason for asking for an  
4 additional loan or an additional line?

5 A We were having serious cash flow problems  
6 because we had incurred a lot of expenses on Scott  
7 Air Force Base that we had not gotten paid for.  
8 There were other things related to other jobs, but  
9 the biggest part of it was Scott Air Force Base.

10 Q And what was the specific, at least the  
11 initial request, to Allfirst? What was CCI asking  
12 Allfirst to do?

13 A To give us an additional loan to cover our  
14 cash shortages. I don't recall -- I was assuming we  
15 had asked for 1.2.

16 Q Was the request to increase the \$4 million  
17 line to 5 million or 5.2 million, or was there a  
18 request for a separate loan?

19 MS. JOYCE: Object to the form of the  
20 question. You've given her two alternatives.

21 MR. SWICHAR: I object too because there is  
22 a document that would be helpful if shown

23 BY MR. GEBHARDT:

24 Q Do you recollect what the original request  
25 was, not the loan that was made, but whether CCI

27

29

1 asked for the line of credit to be increased for a  
 2 separate loan or for some other credit that was not  
 3 ultimately given?

4 A I think we initially wanted an increase in  
 5 the line of credit.

6 Q And what was the response initially from  
 7 Allfirst to the request?

8 A As I recall -- I guess I'm not sure what  
 9 you're looking for.

10 Q In other words, you asked -- CCI asked  
 11 Allfirst to increase the line of credit from \$4  
 12 million to \$5 million. What was Allfirst's response?

13 MR. SWICHAR: Objection.

14 MS. JOYCE: I'm going to object. You  
 15 mischaracterized her testimony. She indicated that  
 16 the request was for an additional loan to cover cash  
 17 shortage. She did not indicate a specific amount.  
 18 So I'm going to instruct her not to answer that  
 19 because it mischaracterizes what she testified to.

20 BY MR. GEBHARDT:

21 Q You indicated, I believe, that CCI  
 22 initially asked for an increase in the \$4 million  
 23 line of credit?

24 A Yes, I do.

25 Q And I think you also indicated that the

1 an additional \$1 million of credit to CCI unsecured?  
 2 A No, I don't recall that in the meeting.  
 3 Q Okay. Was there any indication by Allfirst  
 4 of conditions -- of the conditions under which they  
 5 would grant additional credit of a million dollars or  
 6 more?

7 A As I recall, it was -- they said that they  
 8 would do it -- as I recall, there was some discussion  
 9 about what we could give as collateral for this  
 10 additional amount. Most of our equipment had already  
 11 been financed. What wasn't, they said they could  
 12 take a part of that; but in addition to that, they  
 13 wanted a personal guarantee on the loan.

14 Q And that was from Mr. Ortenzio?

15 A Yes.

16 MR. GEBHARDT: Could I have this marked the  
 17 next exhibit?

18 (11/5/1999 letter was marked Deposition  
 19 Exhibit No. 6.)

20 BY MR. GEBHARDT:

21 Q I've handed you what has been marked as  
 22 Deposition Exhibit No. 6 which is a copy of the  
 23 commitment letter for the \$1,200,000 loan that  
 24 Allfirst made to CCI Construction on or about  
 25 November 5, 1999.

30

1 amount of the increase that was being requested was  
 2 at least a million dollars; is that correct?

3 MS. JOYCE: Object to the form of the  
 4 question.

5 MR. SWICHAR: I object to the form of the  
 6 question.

7 BY MR. GEBHARDT:

8 Q Is that correct?

9 A That it was at least a million?

10 Q Yes.

11 A Yes.

12 Q And what was Allfirst's response to the  
 13 request by CCI to increase the \$4 million by a line  
 14 of credit by at least a million dollars?

15 A As far as I recall, they wanted to set it  
 16 up under a separate note because they were handling  
 17 it differently because the \$4 million was an  
 18 unsecured line of credit. They wanted any additional  
 19 amount to be personally guaranteed by the president.

20 Q And whose idea was the guarantee by the  
 21 president of CCI? Where did that idea originate?

22 MS. JOYCE: If you know.

23 BY MR. GEBHARDT:

24 Q Let me rephrase the question. Did Allfirst  
 25 indicate in the meetings that it was willing to give

1 While your signature is not on this, it has  
 2 been identified in other depositions. I don't think  
 3 there is any dispute that this is a copy of the  
 4 commitment letter.

5 The first question is, Did you see a copy  
 6 of the commitment letter at or about the time it was  
 7 issued?

8 A I did. Actually, that is my signature.  
 9 I'm just attesting, but it does have my signature.

10 MR. GEBHARDT: All right. Very good.

11 Let's mark this has Deposition Exhibit No. 7.

12 (Commercial loan note was marked as  
 13 Deposition Exhibit No. 7.)

14 BY MR. GEBHARDT:

15 Q I've handed you Deposition Exhibit No. 7  
 16 which is a commercial line note dated November 8th,  
 17 1999. Is your signature also on the second page of  
 18 that attesting?

19 A As a witness, yes.

20 Q And Exhibit 7 would be the promissory note  
 21 reflecting the \$1.2 million loan that is described in  
 22 the commitment letter that's Exhibit 6?

23 A That's correct.

24 Q Now, if you look at Exhibit 6, the next to  
 25 the last paragraph, you'll see a statement that,

31

1 quote, if no demand is made, the loan will expire and  
 2 all borrowings will be due and payable, comma,  
 3 together with interest thereon, on March 31, 2000 --  
 4 MS. JOYCE: For the record, you're talking  
 5 about the second to the last paragraph on page 1 of  
 6 Exhibit No. 6?  
 7 MR. GEBHARDT: Yes.  
 8 BY MR. GEBHARDT:  
 9 Q -- period, unquote. Was it your  
 10 understanding that the \$1,200,000 loan was due from  
 11 CCI on or about March 31, 2000?  
 12 A Yes.  
 13 Q In the course of the meetings that you may  
 14 have had with Mr. Zarcone and Mr. Schwartz on behalf  
 15 of Allfirst, was there any discussion of where CCI  
 16 was going to get the money to repay the \$1,200,000  
 17 loan by March 31, 2000?  
 18 A As I recall, it was definitely discussed.  
 19 Whether it was at that meeting or in the paperwork  
 20 afterwards on the phone, I'm pretty sure it was at  
 21 that meeting. Yes, we had discussions about how that  
 22 money would be paid back.  
 23 Q And what was the substance of those  
 24 discussions?  
 25 A That the cash flow that we would have

33  
 1 A I had done some cash flow projections. I  
 2 know John was adamant about having this paid back on  
 3 a short-term basis. When I gave him the cash flow  
 4 projections, I had said that if the job profits that  
 5 are projected hold, we would have the money to pay  
 6 back this 1.2 million.  
 7 I also told him that we had seen declining  
 8 job profit projections over time. I said, I'm not  
 9 making the projections on the jobs. That's what I've  
 10 been given from the people in operations. Each month  
 11 they were decreasing.  
 12 I said, based on what the most current  
 13 projections were, if they came in at that amount, we  
 14 would have the cash flow to pay back the 1.2 million.  
 15 Q At the time you were having these  
 16 discussions with Mr. Ortenzio, were there any  
 17 discussions about using a borrowing under the \$4  
 18 million line of credit to repay the \$1.2 million  
 19 guaranteed note?  
 20 A No, there were not.  
 21 Q In 1999 and the year 2000, did  
 22 Mr. Ortenzio, to your knowledge, have any involvement  
 23 in the repaying of the loans to Allfirst Bank?  
 24 A Which loans?  
 25 Q Well, there were three loans. You had the

34  
 1 coming in from receivables and projects would  
 2 generate enough cash to pay this down on a short-term  
 3 basis.  
 4 Q In the discussions, was it discussed that  
 5 CCI would repay the \$1.2 million loan by making a  
 6 borrowing on the \$4 million line of credit?  
 7 A No, it was not.  
 8 Q I note on Exhibit 4 that again there's the  
 9 reference to the \$4 million Scott Air Force Base  
 10 receivable. Did that \$4 million receivable have any  
 11 relationship to a source of funds to repay the \$1.2  
 12 million loan?  
 13 A I don't recall if that -- if that was  
 14 specifically said or not.  
 15 Q Now, at the time the \$1.2 million loan was  
 16 being taken out, I take it you had discussions with  
 17 Mr. Ortenzio about the borrowing?  
 18 A That's correct.  
 19 Q And did you and Mr. Ortenzio discuss where  
 20 CCI would obtain the funds to repay the \$1.2 million  
 21 when it came due which, according to the commitment  
 22 letter, was March 31, 2000?  
 23 A Yes, we did.  
 24 Q And what was the substance of those  
 25 discussions?

36  
 1 line of credit -- let's start first with the \$4  
 2 million line of credit. Did he get involved in how  
 3 that was being paid or repaid at all?  
 4 A I'm not sure.  
 5 MS. JOYCE: What time?  
 6 MR. GEBHARDT: In 1999 and 2000.  
 7 THE WITNESS: Did he get involved in how it  
 8 was repaid?  
 9 BY MR. GEBHARDT:  
 10 Q Or the process, the repayment process?  
 11 A No, that was the line of credit. As the  
 12 cash came in, it was paid down.  
 13 Q How about the repayment of the equipment  
 14 loan?  
 15 A No, he did not.  
 16 Q Okay. Now, the \$1.2 million loan was  
 17 repaid by CCI on or about February 11, 2000, by the  
 18 delivery of a check by Mr. Ortenzio personally to  
 19 Allfirst.  
 20 Prior to that date, had you had any  
 21 discussions with Mr. Ortenzio about the repayment of  
 22 the \$1.2 million line of credit?  
 23 A Yes. He had come to me about that.  
 24 Q And what was the substance of the  
 25 discussions you had?

37

1       A He wanted to pay down the \$1.2 million --  
 2 the \$1.2 million line, he wanted to pay down because  
 3 he had that personally guaranteed. He had asked me  
 4 about writing a check out to pay that off from the  
 5 line of credit, and I refused.

6       Q Why did you refuse?

7       A I didn't think it was in the best interest  
 8 of the corporation to do that.

9       Q And could you explain why you had those --  
 10 that you didn't think it was in the best interest of  
 11 the corporation?

12      A One, I guess I didn't think there was any  
 13 benefit to doing it. The interest rates were the  
 14 same in the loans so there was no corporate benefit  
 15 from paying one -- drawing in one line of credit to  
 16 pay the other.

17      Two, if we had the extra cash, I would have  
 18 thought it best suited to pay payroll and accounts  
 19 payable and subcontractors.

20      Q And at the time the loan was paid in  
 21 February, the company was experiencing cash flow  
 22 difficulties?

23      A Yes.

24      Q And did you understand that repaying the  
 25 \$1.2 million loan with a draw on the \$4 million line

1 and he wanted that paid off because he had had his  
 2 personal guarantee.

3       Q Did you believe using the \$4 million line  
 4 of credit to repay the \$1.2 million guaranteed loan  
 5 was consistent with the agreement that CCI and  
 6 Allfirst had entered into when Allfirst gave the \$4  
 7 million line of credit?

8       MR. SWICHAR: I object to the form of the  
 9 question. She's not an attorney. You're asking her  
 10 to interpret legal documents which is the province of  
 11 the judge and not Ms. Phillips.

12      MS. JOYCE: Let me hear the question back.

13      (The reporter read back the referred-to  
 14 portion of the record.)

15      MR. SWICHAR: Let me renew my objection.  
 16 Consistent with the agreement it would require an  
 17 interpretation of the loan documents which is not the  
 18 proper function of Ms. Phillips. You may answer the  
 19 question.

20 BY MR. GEBHARDT:

21      Q You may answer the question.

22      A As chief financial officer and what I knew  
 23 of the loan documents, no, I did not think it was.

24      Q And would you explain why that was your  
 25 thought?

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1 of credit would reduce the amount of available cash  
 2 to the company?

3       A Yes, definitely.

4       Q Okay. Now, in terms of the physical paying  
 5 of the \$1.2 million loan, you did not write the  
 6 check?

7       A No, I did not.

8       Q Did you have signature authorities over the  
 9 checking account?

10      A Yes, I did.

11      Q And so if you had wanted to, you could have  
 12 written a \$1.2 million check and sent it in to  
 13 Allfirst?

14      A Yes, I could have.

15      Q Did Mr. Ortenzio have any reaction to your  
 16 refusal to write the check or make that payment?

17      A Initially when he had asked me about it and  
 18 I said no, he didn't do anything. Then at a later  
 19 point in time, he came back to me again and said I  
 20 know you don't agree with this; but I need to do it.  
 21 I said, you're the president of the company; but I'm  
 22 not going to be any part of it.

23      Q Did he at all elaborate on when he said I  
 24 need to do this, what he was meaning by this?

25      A He personally guaranteed the 1.2 million

1 A Because I looked at the line of credit as  
 2 being a way for us to pay for our ongoing work in  
 3 progress and to pay our vendors and subcontractors.  
 4 And as far as I have recalled in prior notes, there  
 5 were certain things I thought we weren't allowed to  
 6 do. I know that it was in this one; but going to  
 7 another bank and getting additional loans, I thought  
 8 there were restrictions in there that prevented it.

9       MR. GEBHARDT: Let's mark this as the next  
 10 exhibit and also the next.

11      (Income statement was marked as Deposition  
 12 Exhibit No. 8.)

13      (Balance sheet was marked as Deposition  
 14 Exhibit No. 9.)

15 BY MR. GEBHARDT:

16      Q I've handed you what's been marked as  
 17 Deposition Exhibits 8 and 9, which appear to be  
 18 internally-generated financial statements for CCI  
 19 Construction for a 13-month period beginning in 1999,  
 20 January 1, I guess, Exhibit 8 being an income  
 21 statement and Exhibit 9 being the balance sheet.

22      Do you recognize these as  
 23 internally-generated financial statements?

24      A Yes, I do.

25      Q And you would have been involved at this

40

41

1 time in the generation of these financial  
 2 statements --

3 MS. JOYCE: Object to the form of the  
 4 question. You may answer.

5 BY MR. GEBHARDT:

6 Q -- as supervisor of the accounting  
 7 department?

8 A Yes, I would have.

9 Q And would I be correct that after these  
 10 were generated, they were provided to Mr. Ortenzio?

11 A Yes.

12 Q And at the top of the page in the  
 13 right-hand corner, there's an indication 02-14-2000  
 14 14:05, is that a reference to when these statements  
 15 were printed out?

16 A Yes, it is.

17 Q Roughly how long after they were printed  
 18 out would it have been when you gave these to  
 19 Mr. Ortenzio?

20 A Probably within -- if he was in the office  
 21 and we did these, it would have been within a day or  
 22 two.

23 Q Now, the income statement, if you look at  
 24 the second page, would I be correct indicates --

25 MS. JOYCE: The second page of which

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1 record is clear. The witness is referencing Exhibit  
 2 No. 8.

3 MR. GEBHARDT: Thank you.  
 4 BY MR. GEBHARDT:

5 Q Prior to this document, which is Exhibit 8,  
 6 being generated, was it understood by you that CCI  
 7 for the fiscal year 1999 was going to sustain an  
 8 operating loss in the magnitude that's reflected on  
 9 the statement?

10 A Could you repeat that?

11 Q Right. I mean before February 14 when this  
 12 statement was printed out, did you have an  
 13 appreciation that the company was likely to sustain a  
 14 loss in the \$6 million area for the fiscal year 1999?

15 A Sometime prior to printing this, yes.

16 Q And based on your discussions with  
 17 Mr. Ortenzio and things he said to you, did he have  
 18 an understanding that the company was going to  
 19 sustain a loss for fiscal year 1999 in this area?

20 A Prior to this?

21 Q Yes.

22 A Prior to this, he would have -- if I can  
 23 back up. What generates the profits on the jobs are  
 24 reports that -- I'm sorry. What generates the profit  
 25 or loss on the income statement is information I got

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1 exhibit?

2 MR. GEBHARDT: Of Exhibit 8.

3 BY MR. GEBHARDT:

4 Q -- that there is a net loss the company has  
 5 sustained of slightly over \$6 million?

6 A That's correct.

7 Q And did you have occasion to discuss with  
 8 Mr. Ortenzio that amount of loss of the company for  
 9 the 13-month period after these statements were  
 10 generated?

11 A Yes.

12 Q Would I be correct that there was a  
 13 12-month internal income statement also generated at  
 14 CCI? Would that have been the normal practice?

15 A That's the normal practice, but this  
 16 actually would have been the 12-month statement --  
 17 you mean because of the 13 months up there?

18 Q Yes.

19 A Thirteen months was how our accounting  
 20 system would give us time at the end of the year to  
 21 go into the next year so that you could do W-2s in  
 22 the prior year and keep it open for adjustments and  
 23 start your next year of business. So this was  
 24 actually for 12 months.

25 MS. JOYCE: Let me just make sure the

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1 from operations projecting job profits or losses. At  
 2 the time those losses came in, they changed  
 3 drastically because they deceased.

4 At that time, I had constant conversations  
 5 with our chief operating officer. He would meet with  
 6 John, and I would meet with him sometimes together,  
 7 sometimes apart. This is the final result.

8 As we discussed that, we knew that it was  
 9 going to hit our bottom line in a big way as far as  
 10 an exact amount. We knew it was coming together for  
 11 a big loss.

12 Q And focusing on the February 11, 2000 date  
 13 on which Mr. Ortenzio delivered the CCI check to  
 14 Allfirst to pay the \$1.2 million loan, prior to that  
 15 date and based on your discussions and interactions  
 16 with Mr. Ortenzio, was he aware of the company's  
 17 financial situation that was going to result in a  
 18 loss somewhere in the magnitude reflected on Exhibit  
 19 8?

20 A Oh, yes.

21 Q And based on your discussions with him, did  
 22 his awareness of that -- did he express any  
 23 relationship between anticipating this loss and  
 24 wanting to get the \$1.2 million loan paid?

25 MS. JOYCE: You mean prior to February 11?

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1 Are you still in the same time frame?

2 MR. GEBHARDT: Yes.

3 THE WITNESS: Give me the question again.

4 BY MR. GEBHARDT:

5 Q Did Mr. Ortenzio in any way relate the  
6 anticipated loss in the rough area of \$6 million to  
7 getting the \$1.2 million loan repaid even if he had  
8 to borrow on the line of credit?

9 A Yes.

10 Q Do you remember anything he may have said  
11 to you in that regard?

12 A When we had these discussions, the chief  
13 operating officer was Shane Miller; the president,  
14 John; myself -- and I don't recall if the senior VP  
15 was involved. I think it was probably just the three  
16 of us.

17 Initially, when he talked about the  
18 financial condition of the company, the chief  
19 operating officer had said that in order to keep  
20 going that the company would need more cash put into  
21 it.

22 At that time, John had said he was not  
23 going to put more cash into the company. That's when  
24 in the meetings, Shane, our chief operating officer,  
25 said, if you're not going to, we have serious

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1 million loan off.

2 Were you aware that that meeting at  
3 Allfirst was going to occur prior to February 18,  
4 2000?

5 MS. JOYCE: Assuming all that information  
6 to be correct.

7 MR. GEBHARDT: Yes, and I think it's  
8 without dispute in the litigation. I can represent  
9 that to you.

10 THE WITNESS: At that point, John had  
11 decided to meet with the bank himself; but yes, I  
12 knew he was going to meet with the bank.

13 BY MR. GEBHARDT:

14 Q What did you understand was the purpose of  
15 his meeting with the bank?

16 A To talk to them about our financial  
17 condition of the company.

18 Q To your understanding, were you going to  
19 make any request for financing or additional credit  
20 or what was he going to do in the meeting?

21 A No. He had already said that he didn't  
22 want to invest in the company anymore. He was  
23 talking to them to say that here's where we are.  
24 Here's our position; and at some point, I don't  
25 remember the exact dates, but he had given a strong

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1 problems. We need to talk to the bank and bonding  
2 company.

3 At that time, we hadn't right then called  
4 because it was an issue of whether John would put  
5 more money into the company or not. And he had  
6 decided that he wanted to pay off the \$1.2 million  
7 prior to those discussions with going forward with  
8 the bank or the bonding company.

9 Q Now, there was a meeting at Allfirst that  
10 Mr. Ortenzio attended with various representatives  
11 including Michael Zarcone and Craig Schwartz on  
12 February 24, 1999, which was the Friday after  
13 February 11, 1999, when the \$1.2 million line --

14 MS. JOYCE: The date is incorrect. I think  
15 you might want to just change the year.

16 MR. GEBHARDT: 2000.

17 MS. JOYCE: Why don't we start the question  
18 again so the form is correct for the witness?

19 BY MR. GEBHARDT:

20 Q There was a meeting held at Allfirst  
21 attended by Mr. Ortenzio and various representatives  
22 of Allfirst including Craig Schwartz and Michael  
23 Zarcone on February 18, 2000, which was a Friday.  
24 That's the Friday after February 11, 2000, when  
25 Mr. Ortenzio delivered the check to pay the \$1.2

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1 impression to us that he was not going to continue  
2 with company.

3 Q Now, Mr. Ortenzio attended that meeting  
4 with an attorney named Chernicoff. Do you know how  
5 Mr. Ortenzio came in contact with Mr. Chernicoff?

6 A As I recall, he had told me that initially  
7 he had talked to Leroy Zimmerman about being his  
8 counsel. I thought there was a conflict of interest.  
9 I wasn't involved in the conversations, but there was  
10 a conflict of interest and that he was going to use a  
11 bankruptcy attorney named Bob Chernicoff. I didn't  
12 know him.

13 Q Did Mr. Ortenzio express to you that  
14 Mr. Chernicoff was a bankruptcy attorney?

15 A I don't recall where I learned he was a  
16 bankruptcy attorney. We had the discussion of  
17 bankruptcy, and he hired Chernicoff. Whether he told  
18 me he was a bankruptcy attorney, I don't know.

19 Q So you and Mr. Ortenzio had had discussions  
20 regarding CCI's possible bankruptcy before the  
21 February 18, 2000 meeting at Allfirst?

22 A Yes.

23 MS. JOYCE: Object to the form of the  
24 question. That's fine.

25 MR. GEBHARDT: Let's mark this as the next

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1 exhibit.

2 (Cash flow projections were marked as  
3 Deposition Exhibit No. 10.)

4 MS. JOYCE: Can we take a short break  
5 before you get to that one?

6 MR. GEBHARDT: Sure.

7 BY MR. GEBHARDT:

8 Q I have handed you what has been marked as  
9 Deposition Exhibit No. 10, which has been identified  
10 in other depositions as a cash flow statement that  
11 Mr. Ortenzio distributed at the meeting at Allfirst  
12 on February 18, 2000. Do you recognize this  
13 document?

14 A I do recognize it, yes.

15 Q Was this a document that you would have  
16 been involved, at least in a supervisory capacity, in  
17 having prepared?

18 A Yes.

19 Q Do you know whether this was prepared  
20 especially for the meeting at Allfirst or just as a  
21 general overall projection?

22 A The specific report, I don't recall; but we  
23 did these projections on a normal basis.

24 Q Did you have any discussions with  
25 Mr. Ortenzio prior to the February 18, 2000 meeting

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1 about the numbers that are reflected on this cash  
2 flow statement that is Exhibit 10?

3 A Yes, actually -- oh, I'm sorry. Say that  
4 again, the date.

5 Q Well, prior to the meeting with Allfirst,  
6 did you have any discussions with Mr. Ortenzio about  
7 what these numbers were and their consequences to the  
8 company?

9 MS. JOYCE: Prior to the February 18th,  
10 2000 meeting so the record is clear?

11 MR. GEBHARDT: Yes.

12 THE WITNESS: We discussed cash flow.

13 Whether it was this specific cash flow report, I  
14 don't know. This does have John's writing on it.

15 BY MR. GEBHARDT:

16 Q Were there any discussions that you had  
17 with Mr. Ortenzio about where the company was going  
18 to come up with the money that it needed to make up  
19 the cash flow shortfalls that are reflected on  
20 Deposition Exhibit No. 10?

21 A I'm sorry. Could you repeat that? I saw  
22 this FAX up here.

23 Q Did you have any discussions with  
24 Mr. Ortenzio prior to the meeting at Allfirst where  
25 the company was going to get the money to meet these

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1 get money back on these claims.

2 John refused to do that; and Shane said, if  
3 we can't do that, we can't keep going forward. The  
4 bonding company will have to step in, or we're going  
5 to file bankruptcy or something.

6 We had several meetings discussing that,  
7 and the likelihood of the company going forward was  
8 slim at that point because John had said he was not  
9 making any additional commitments.

10 At some point in time, we had found out  
11 that the Scott Air Force Base was not going to come  
12 in real quickly. We needed something at that point  
13 in time. We discussed the longevity of the company  
14 and the fact that we weren't going forward. That's  
15 what prompted the discussions with Allfirst.

16 Q Did you know that this document, which is  
17 Exhibit 10, was going to be distributed at the  
18 meeting at Allfirst before the meeting?

19 MR. SWICHAR: I object because I think she  
20 said she didn't recall the specific document.

21 BY MR. GEBHARDT:

22 Q Is that correct? You don't recall the  
23 specific document?

24 MS. JOYCE: I don't think that was her  
25 testimony. You can clarify your response.

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1 BY MR. GEBHARDT:

2 Q That's fine. I'm not trying to put words  
3 in your mouth. If I --4 MS. JOYCE: No. I think the  
5 mischaracterization was from Mr. Swichar. I think  
6 her statement was she did not recall whether Exhibit  
7 No. 10 was prepared specifically for the meeting with  
8 Allfirst on February 18th of 2000 or whether it was  
9 prepared in the normal course of business.10 THE WITNESS: But I do recognize this  
11 document. But like I said, we prepared them on a  
12 normal basis. So actually which one was a specific  
13 one, we prepared these at least monthly, sometimes  
14 more often during the month especially towards the  
15 end.

16 BY MR. GEBHARDT:

17 Q Do you know whether or not based on your  
18 discussions with Mr. Ortenzio and prior to February  
19 18 he planned to disseminate this, Exhibit 10, to the  
20 people at Allfirst at the meeting?21 A He had a copy of this when he said he was  
22 going to talk to the bank. That was probably the  
23 first time he's ever met with our bankers by himself.  
24 So what actually happened at that meeting, I don't  
25 know. It's the first meeting I think that I had not55  
1 Mr. Ortenzio about what he expected or anticipated  
2 Allfirst's reaction was going to be in that meeting?  
3 A We discussed calling Allfirst and the  
4 bonding company. Both phone calls we discussed at  
5 each meeting. They weren't separate for the bonding  
6 company and the bank.7 As I recall, when John set up the meeting,  
8 it happened pretty quickly; and he went to the  
9 meeting. Like I said, it happened pretty fast.10 Q And as of the February 18, 2000, meeting  
11 which was a Friday, you were aware at least as of  
12 that Friday that Mr. Ortenzio had caused CCI to draw  
13 on the \$4 million line of credit to repay the \$1.2  
14 million loan preceding Friday?

15 A Yes, I was.

16 Q Were there any discussions about whether he  
17 would or would not disclose that borrowing on the  
18 line of credit to Allfirst at the meeting?19 MS. JOYCE: Obviously, prior to the  
20 meeting?

21 MR. GEBHARDT: Prior to the meeting, yes.

22 THE WITNESS: I don't recall if he said he  
23 was going to.

24 BY MR. GEBHARDT:

25 Q Do you recollect after the meeting having

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1 been involved in especially because Dave wasn't  
2 there.3 Q Do you know why you weren't involved in  
4 that meeting?5 MS. JOYCE: Without guessing or  
6 speculating.7 THE WITNESS: No, I don't. We were  
8 surprised about it afterwards.

9 BY MR. GEBHARDT:

10 Q If the meeting happened on a Friday,  
11 roughly, when would you have learned that the meeting  
12 was going to occur?13 A I honestly can't recall exactly when I  
14 learned of the meeting. Things happened pretty fast  
15 in that last week when we notified -- we were going  
16 to notify Allfirst and the bonding company both at  
17 the same time; the bonding company, for whatever  
18 reason, delayed the meeting. Allfirst, John met with  
19 them right away.

20 Q Did you ask to go to the meeting?

21 A No.

22 Q Did you at all ask why you weren't being  
23 invited to attend?

24 A Not that I recall.

25 Q Did you have any discussions with

1 any discussions reasonably following the meeting and  
2 time-wise with Mr. Ortenzio about how he thought the  
3 meeting went and so on?4 MS. JOYCE: Object to the form of the  
5 question in terms of and so on. You can answer.

6 BY MR. GEBHARDT:

7 Q Did Mr. Ortenzio tell you how the meeting  
8 went in reasonable proximity to the time the meeting  
9 occurred?10 A I don't recall him being very detailed  
11 about the meeting.12 Q Now again, the meeting occurred on a  
13 Friday; and I believe it was in the afternoon. Do  
14 you know whether CCI wrote any checks or made  
15 payments to creditors this succeeding week?

16 A I'm sorry. Which succeeding week?

17 Q In other words, February 18, 2000, was a  
18 Friday; so was CCI still writing checks to its  
19 vendors or payments to its vendors as of Monday?20 MS. JOYCE: Monday the 21st of February  
21 2000?

22 MR. GEBHARDT: Yes.

23 THE WITNESS: Yes, we were.

24 BY MR. GEBHARDT:

25 Q And do you know whether Mr. Ortenzio was

1 aware that those checks were being written and  
2 payments were being made?

3 A Yes, he was. He actually helped make  
4 selections as to who was being paid.

5 Q Was it ever your understanding prior to  
6 February 18, 2000, that Mr. Ortenzio was meeting with  
7 the bank to discuss renewing the \$4 million line of  
8 credit?

9 MS. JOYCE: Object to the form of the  
10 question.

11 THE WITNESS: Could you repeat?

12 BY MR. GEBHARDT:

13 Q In other words, prior to the meeting -- the  
14 meeting occurred on February 18, 2000. Did you ever  
15 understand based on speaking with Mr. Ortenzio that  
16 he was attending the meeting to negotiate a renewal?

17 A At the meeting on the 18th?

18 Q At the meeting, yes.

19 A No. That was not my understanding.

20 MR. GEBHARDT: Just a minute. Excuse us.

21 (Break.)

22 MR. GEBHARDT: Just a couple quick points,  
23 and then we'll be done.

24 BY MR. GEBHARDT:

25 Q Looking back to your answer to the last

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1 a second?

2 MR. GEBHARDT: Sure.

3 (Off the record discussion.)

4 BY MR. GEBHARDT:

5 Q Looking at the bottom left-hand corner  
6 where it says 2/16/00 and then 7:08 p.m., would that  
7 be the time this was printed off the computer?

8 A Yes.

9 Q Looking up to the February column, are the  
10 numbers there as of February 1 or would they be as of  
11 February 28?

12 A As I recall, the beginning cash balance, I  
13 think, was February 1; and the ending cash balance  
14 would have been February 28 in the first column. And  
15 then that carries forward to March, so that would be  
16 the beginning of March at the top of the column and  
17 the end of March at the bottom.

18 Q Where it says the next line after ending  
19 cash balance, available line of credit \$5,200,000,  
20 would that also be a number reflected as of February  
21 28?

22 A Yes. As far as I recall, that was what my  
23 projection was.

24 Q The cash flow projection doesn't reflect  
25 the repayment of the \$1.2 million loan with a draw on

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1 question or couple questions, you indicated that  
2 Mr. Ortenzio, after the February 18, 2000 meeting  
3 with Allfirst, became involved in selecting which  
4 creditors would receive checks, I believe; is that  
5 correct?

6 A That's correct.

7 Q Prior to that time, had Mr. Ortenzio  
8 involved himself in a similar fashion in selecting  
9 who would or would not be paid?

10 A He may -- I don't remember the exact time.  
11 He may have the week before or within the two weeks  
12 before; but prior to that in prior business, that was  
13 something he didn't get involved in, the day-to-day  
14 accounting.

15 Q If I could, let me just ask you just a  
16 couple clarifying points that you might be able to  
17 help me with on the lower left-hand corner --

18 MR. SWICHAR: Which number?

19 MR. GEBHARDT: No. 10.

20 BY MR. GEBHARDT:

21 Q -- 2/16/00, that would have been the time  
22 this was printed off of the computer?

23 MR. GEBHARDT: It's the cash flow. It's  
24 got Ortenzio 5.

25 MS. JOYCE: Could we go off the record for

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1 the \$4 million line of credit?

2 A No, it didn't.

3 Q And based on your understanding of how the  
4 numbers work on this Deposition Exhibit 10, is there  
5 any way Allfirst could have learned by looking at  
6 this document that Mr. Ortenzio had caused CCI to  
7 borrow on the \$4 million line of credit to repay the  
8 \$1.2 million guaranteed loan?

9 A No.

10 MR. GEBHARDT: I have no further questions.

11 MR. SWICHAR: Could we either take a  
12 15-minute break now or break for lunch. I'll have  
13 about an hour's worth.

14 MS. JOYCE: It's the witness's call.

15 THE WITNESS: If we could take about a 10-  
16 or 15-minute break now, then I could get back to  
17 work.

18 MR. SWICHAR: Okay. Let's take 15 minutes.  
19 Thanks.

20

21 CROSS EXAMINATION

22

23 BY MR. SWICHAR:

24 Q Ms. Phillips, I sort of want to trace some  
25 of the questions that you were previously asked

60

beginning with Exhibit 2, which is the \$4 million note. Do you have that there?

I believe you testified that you basically were responsible as far as the CCI was concerned for the changes that were reflected and initialed on the note with the possible exception of Item No. 6 in which Mr. Ortenzio had wanted a 30-day protection reflected in that note; is that correct?

A Yes, that's correct.

Q Knowing what you know now, did the bank provide that 30-day notice requirement for protection, as you called it, reflected in 6?

MR. GEBHARDT: Objection.

MS. JOYCE: I'm going to object to the form.

BY MR. SWICCHAR:

Q If you understand, you can answer it.

A Let me just read the paragraph again. What was your question?

Q Did the bank, if you know, provide the 30-day notice reflected in paragraph 6 when it entered a default or called a default under the note?

A That's for repayment. I guess I don't know the situation that we had really applies directly to that.

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1 changes in any way that is reflected on page 2 of the  
2 note?

3 THE WITNESS: I had discussions with John  
4 about the changes.

5 BY MR. SWICCHAR:

6 Q Did you have discussions with the bank?

7 A About this note?

8 Q About this note and the changes reflected  
9 therein.

10 A I don't recall if I talked to them about it  
11 or if John did.

12 Q Do you recall having any discussions with  
13 the bank or Mr. Ortenzio with respect to limiting  
14 Mr. Ortenzio's guarantee to the \$1.2 million note and  
15 thereby excluding the \$4 million note?

16 A I do remember discussions about that.

17 Q With whom were those discussions?

18 A With John.

19 Q Any with the bank?

20 A As I recall, I think that that was  
21 discussed with the bank also.

22 Q You were present at the signing when  
23 Mr. Ortenzio signed this?

24 A Yes, I was.

25 Q And were you present when the bank made the

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1 changes reflected on the note?

2 A I don't recall that.

3 Q What do you recall about the discussions  
4 with the bank insofar as limiting Mr. Ortenzio's  
5 guarantee to the 1.2 million in contrast to extending  
6 it to the \$4 million line?

7 A Specifically that, that this was going to  
8 be written up as a separate note that would have his  
9 personal guarantee and his personal guarantee did not  
10 go to the \$4 million loan.

11 Q Do you recall anybody at the bank  
12 verbalizing their acceptance of that apart from what  
13 is in the note itself apart from Mr. Schwartz?

14 A Not that I recall.

15 Q Now, we agree that the bank had three loan  
16 facilities: The \$4 million line of credit, the \$1.2  
17 million line note and the related surety, and the  
18 equipment note. Am I correct that CCI only had one  
19 checking account at Allfirst?

20 MS. JOYCE: At any time or in 1999 and  
21 2000?

22 MR. SWICCHAR: 1999 and 2000.

23 THE WITNESS: No, that's not correct.

24 BY MR. SWICCHAR:

25 Q When did it have another checking account?

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Q Pardon me. You don't know?

A They didn't ask us to repay it.

Q How about with respect to the declaration  
of default? Did the bank give a 30-day notice? Do  
you know?

MR. GEBHARDT: Objection.

THE WITNESS: No. I don't recall any such  
notice.

BY MR. SWICCHAR:

Q Would you turn to the \$1.2 million note,  
which is your Exhibit 7, which I understand you  
didn't sign except as the attestation clause. Were  
you responsible in any way or were you involved in  
any way with respect to the changes initialed in the  
\$1.2 million note?

A As I recall, John and I reviewed this note  
before he had signed it.

Q And you recall having discussions with the  
bank and/or with Mr. Ortenzio with respect to the  
changes as, for example, the change reflected in the  
second paragraph on page 2 of the note, third  
paragraph, the second and third. I'm sorry.

MS. JOYCE: Your question was, Did she  
discuss the contents of those --

MR. SWICCHAR: Was she involved in the

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1       A   We had -- our accounts were tied together.  
 2   We had an account for our payroll, and we had an  
 3   account for our accounts payable. They were all tied  
 4   to the accounts payable. They were all tied but  
 5   handled in a different way.

6       In addition to that, we had a small account  
 7   for a cafeteria plan for money that was presented for  
 8   their medical health bills.

9       Q   Which accounts were tied into the cash  
 10   management account, the one where moneys would be  
 11   swept?

12      A   Accounts payable, payroll, and the line  
 13   itself.

14      Q   All three -- all the checking accounts were  
 15   tied into the cash management?

16      A   Yes, they were.

17      Q   As far as you know, CCI had no checking  
 18   accounts elsewhere with another bank?

19      MS. JOYCE: At any time?

20      MR. SWICHAR: 1999/2000, unless I state  
 21   otherwise.

22      MS. JOYCE: I wasn't clear from your prior  
 23   questions, so that's fine.

24      THE WITNESS: Without thinking about it --  
 25   there may have been some other account for something

1       A   It was Old Gettysburg Road.

2       Q   Do you know why a separate account was set  
 3   up for that?

4       A   I don't know if the account was just set up  
 5   for that or if John had a prior account he was using  
 6   because he had handled that, but he wanted to -- he  
 7   didn't want the money to be intermingled with what  
 8   Allfirst and the bonding company -- he didn't want  
 9   that money in that account that they made draws on.  
 10   He wanted to use that.

11      Q   When you say at the very end he used that,  
 12   what do you mean?

13      MS. JOYCE: I don't believe that's what the  
 14   witness said at the very end. I don't believe that's  
 15   what she was referring to. You can go ahead and  
 16   clarify.

17      THE WITNESS: After the bank and after the  
 18   bonding company were aware of what happened and after  
 19   the bonding company got involved and basically took  
 20   over running the company during that time period, a  
 21   check for that one job came in or check or checks --  
 22   the deposits at that point in time, I think it was  
 23   one check. John put that into a different account.

24      BY MR. SWICHAR:

25      Q   Was that after the bank froze the checking

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1   as far as our main transactions for accounts payable  
 2   and transactions -- they went through Allfirst.

3   BY MR. SWICHAR:

4       Q   Were all accounts receivable or revenues  
 5   deposited in the checking account at Allfirst as far  
 6   as you know?

7       A   Prior to --

8       Q   1999/2000, when money came in by either  
 9   wire transfer or checks, which I believe you stated  
 10   were the means by which funds were collected, were  
 11   they all deposited in the checking account at  
 12   Allfirst which was related to the cash management  
 13   facility?

14      A   They used to be; but right at the end, John  
 15   had used another account.

16      Q   Where was that account?

17      A   I don't know. He had -- it was for a job  
 18   that wasn't bonded. They had a payment that he used  
 19   another checking account to pay some of the vendors  
 20   and one of the deposits into that account.

21      Q   Was that at Allfirst or another bank?

22      A   I'm sure it was another bank, but I don't  
 23   know which one.

24      Q   Apart from that job -- do you recall which  
 25   job that was?

66

1   account at Allfirst?

2       A   Yes, it was.

3       Q   Going back to the Allfirst account, how  
 4   were interest payments on the equipment note paid?

5       A   Interest payments on the equipment note?

6       Q   Yes. Would they be automatic or were  
 7   checks written?

8       A   As I recall, we wrote checks to pay that.

9       Q   Monthly?

10      A   Yes. We were billed. As I recall, we  
 11   actually got an invoice.

12      Q   And those checks were written on the  
 13   Allfirst checking account?

14      A   Yes, they were.

15      Q   They were not swept?

16      A   They were not swept automatically by the  
 17   bank.

18      Q   Checks were written? I just want to make  
 19   sure. I don't know the answer.

20      A   At the end of each day, the account -- all  
 21   the checks that were put against our account, that  
 22   money was taken out of any deposits that were put in.  
 23   If there was an under amount, it was drawn on the  
 24   line to cover that.

25      Q   If there was an excess amount, wouldn't it

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1 reduce the balance on the \$4 million line of credit?  
 2 A If there was an excess amount, yes, it  
 3 would.

4 Q That's why I'm confused. You say it would  
 5 be invested. But it's my understanding, correct me  
 6 if I am wrong, that if there were excess funds in  
 7 that account, it would be deducted from any balance  
 8 owed on the \$4 million line of credit first?

9 A I think you're misinterpreting what I'm  
 10 saying. In the total picture, if, in the \$4 million  
 11 at the end of the day if we got deposits in of \$5  
 12 million, therefore, we had an extra million, that  
 13 would be invested.

14 If you're just looking at the deposits for  
 15 the day, it's applied against the line of credit.  
 16 But what I'm saying when I say that if there's an  
 17 overage amount, if our credit goes to zero, that it  
 18 would be invested.

19 Q That's what I thought. The investment part  
 20 of this transaction only occurs when there is nothing  
 21 due on the \$4 million line of credit --

22 A That's correct.

23 Q -- and the balance is zero?

24 A That's correct.

25 Q Otherwise, any moneys deposited in the

69

1 Q Were the principal payments for the  
 2 equipment note paid by CCI checks; or were they  
 3 automatically deducted by the bank, by the checking  
 4 accounts, or none of the above?

5 A I don't recall if we were making -- I'm  
 6 just trying to remember if we made principal payments  
 7 or if we were making interest-only payments.

8 Q I will represent to you that I think it's  
 9 correct that there were principal payments on the \$2  
 10 million note.

11 A If we were making principal payments -- I  
 12 think they were; I just don't recall exactly -- if we  
 13 were making principal payments, they would be handled  
 14 the same way.

15 Q Which would be checks?

16 A Which would be checks.

17 Q And that would reduce the availability on  
 18 the \$4 million line?

19 A That's correct.

20 Q How about interest payments on the \$1.2  
 21 million note? How were they paid, by checks or  
 22 automatic deductions --

23 A As I recall --

24 Q -- or none of the above?

25 A As I recall, they were paid by check.

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1 checking account which would constitute a surplus  
 2 would be used to reduce the \$4 million line of  
 3 credit?

4 A That's correct.

5 Q Now, if interest payments are paid on the  
 6 equipment note, that would have an impact on the \$4  
 7 million line of credit, would it not?

8 A Yes, it would.

9 Q And what would that impact be?

10 A It would draw on the line of credit.

11 Q How about principal payments on the  
 12 equipment note? How are they paid?

13 A In the same fashion.

14 Q And that would also have the same impact on  
 15 the \$4 million line of credit?

16 A Yes, it would.

17 Q Okay. By the way, principal payments, were  
 18 they by checks or were they swept automatically by  
 19 the bank?

20 MR. GEBHARDT: Objection. Using -- I don't  
 21 know if you're using the term swept in a consistent

22 --

23 MR. SWICHAR: I'll rephrase it. Fair  
 24 objection.

25 BY MR. SWICHAR:

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1 Q And am I correct in saying, like the  
 2 equipment note payments, those payments would have  
 3 the effect of increasing the balance on the \$4  
 4 million line of credit?

5 A Yes.

6 Q Now, Ms. Phillips, were you present at the  
 7 table when the -- bank table when the \$1.2 million  
 8 note and related surety were signed and provided to  
 9 the bank? Were you there?

10 A I don't recall if we actually got together  
 11 to sign it or if we got the loan documents, reviewed  
 12 them, signed them, and gave them to Craig Schwartz.

13 Q Did you have discussions with Mr. Schwartz  
 14 regarding the revisions that were made on the changes  
 15 that were made to the \$1.2 million note and surety?  
 16 You can look at them to refresh your recollection.

17 A I don't recall if I did. In prior loans, I  
 18 can honestly say that I had spoken to Craig Schwartz.  
 19 In this loan, John was very involved; so I don't  
 20 recall if I specifically talked to them or if John  
 21 did. This one was a little different.

22 Q If my notes are correct and the other  
 23 lawyers will account if they're not correct, you  
 24 testified you had discussions regarding how the \$1.2  
 25 million note would be repaid.

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1 I believe you testified that it was  
 2 anticipated that CCI would repay the 1.2 million from  
 3 cash flow that was projected if the projections held  
 4 true. Is that a fair statement?

5 A That's correct.

6 Q Now, with whom did you have those  
 7 discussions -- Mr. Ortenzio, the bank, or both?

8 A I definitely had the discussions with John;  
 9 and as I recall, we had those same discussions with  
 10 the bank also.

11 Q Am I correct in stating that the  
 12 projections that CCI was relying upon turned out not  
 13 to come to fruition?

14 A That's correct.

15 Q When the \$1.2 million note and related  
 16 surety was signed, did you believe those projections  
 17 to be capable of being fulfilled based on your  
 18 financial experience with the company?

19 A As I said, I had concerns; and when I had  
 20 talked to John about those projections, I said those  
 21 were based on what operations were projected for the  
 22 loss or profits on each of those jobs. I had pointed  
 23 out at that time that those profits and/or losses,  
 24 they were decreasing throughout the year.

25 Q Well, did you tell the bank at any time

1 the note to be repaid from projected cash flow? When  
 2 did that occur?

3 A That's what I'm saying, I think -- I can't  
 4 guarantee that that discussion occurred with the bank  
 5 as to how we were paying it back. I know that John  
 6 and I discussed it. I think that that was in -- it  
 7 may have been part of the discussion with the bank,  
 8 but I can't recall that part. I can't recall  
 9 exactly.

10 Q You may have told the bank or there may  
 11 have been discussions with the bank at which you were  
 12 present that projected cash flow would be the source  
 13 of repayment.

14 I'm trying to find out whether or not you  
 15 have an actual recollection of that statement being  
 16 given to the bank by you or by Mr. Ortenzio in your  
 17 presence.

18 A And that's where I'm saying I just don't  
 19 have an exact recollection of that part of the  
 20 conversation.

21 Q Do you recall the bank ever requesting CCI  
 22 through you or Mr. Ortenzio including a provision in  
 23 the \$1.2 million note which would have required the  
 24 repayment to come from projected cash flow?

25 A Say that again.

1 that you didn't expect the projections to be  
 2 accurate?

3 MS. JOYCE: Object to the form of the  
 4 question. You can answer.

5 THE WITNESS: Say it again.

6 BY MR. SWICHAR:

7 Q Did you ever tell the bank at or about the  
 8 time the \$1.2 million note was signed that you didn't  
 9 expect those projections that were going to be the  
 10 source of the payment to be accurate and true?

11 A I didn't say they weren't accurate or true.  
 12 What I said is -- when I gave them to John, I said,  
 13 this is what I've been given by operations.  
 14 Operations, in the past, has shown the profits on the  
 15 jobs decreasing; but as of that point in time,  
 16 information I gave to him, I said, that's the best  
 17 that I can do.

18 Q Did you believe those projections that  
 19 operations provided to you to be true and correct as  
 20 far as projections can go?

21 A I believed at that time that they were  
 22 given as true as they could project, yes.

23 Q When did you have discussions with the bank  
 24 regarding the \$1.2 million note where you said that  
 25 there were discussions that you had that you expected

1 Q Would you -- do you have any recollection  
 2 of the bank ever stating to CCI, either to you or  
 3 Mr. Ortenzio, that it wanted to include a provision  
 4 in the \$1.2 million note that it could only be repaid  
 5 from projected excess cash flow?

6 A I don't recall that, no.

7 Q Do you recall the bank ever requesting a  
 8 provision in the \$1.2 million note which prohibited  
 9 -- which would have prohibited the repayment from the  
 10 \$4 million line of credit?

11 A I do not recall any conversation with the  
 12 bank of making a payment from the \$4 million line of  
 13 credit one way or the other.

14 Q One way or the other?

15 A Yeah.

16 Q Now, you've seen from the commitment  
 17 letters that the \$4 million note was due on April  
 18 30th of 2000; and the \$1.2 million note was due one  
 19 month earlier on March 31st, 2000.

20 I'm not going to have this remarked, but it  
 21 originally was Schwartz 6, if everyone agrees, which  
 22 appears to be an Allfirst memorandum dated November  
 23 2, 1999.

24 Just to put this in the proper context, Ms.  
 25 Phillips, if you look at Phillips 5, which you have

1 in front of you, it's dated -- Schwartz 6 is dated  
 2 two days earlier.

3 A Okay.

4 Q Now, this Schwartz 6 indicates that the  
 5 bank initially contemplated increasing the \$4 million  
 6 line to 5 million. Do you see that?

7 A I do.

8 Q And the \$1 million increase would expire on  
 9 February 28th, 2000. Do you see that?

10 A Yes.

11 Q And it also indicates that Mr. Ortenzio  
 12 would guarantee the entire \$5 million line of credit.  
 13 Do you see that?

14 A I see that.

15 Q Do you recall any discussions that you  
 16 participated in in the bank, with the bank where  
 17 Mr. Ortenzio was requested to guarantee the \$5  
 18 million line as reflected in Schwartz 6?

19 A I don't remember this document.

20 Q In fairness to you, you may never have seen  
 21 this. I don't know. I'm only showing you this to  
 22 refresh your recollection.

23 MS. JOYCE: Your question to this was --

24 MR. SWICHAR: I'll rephrase it since you  
 25 made me forget what the question was.

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1 31, 2000?

2 A I don't know if this was something that  
 3 John talked to them about previously. I just don't  
 4 remember.

5 Q Fair enough. If you turn to your Exhibit  
 6 5, which is the Schwartz memo of 11/4/99, and that  
 7 refers to a meeting that you did attend with  
 8 Mr. Ortenzio and Mr. Schwartz and Mr. Zarcone.

9 You'll notice that in the second paragraph,  
 10 it states that the 1.2 million would be done on a  
 11 temporary basis. Was that consistent with your  
 12 understanding of the \$1.2 million note?

13 A Yes.

14 Q In contrast with the \$4 million line of  
 15 credit which was longer term?

16 A I understood the \$4 million to be a year;  
 17 and as I said, we normally renewed it each year.  
 18 Yes, this was definitely considered short term.

19 Q A one-time note?

20 A Yes.

21 Q It also states that CCI would get an  
 22 additional 500,000 from private sources. Do you  
 23 recall any discussions about that?

24 MS. JOYCE: It, referring to Deposition  
 25 Exhibit No. 5, so the record is clear?

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1 BY MR. SWICHAR:

2 Q Do you recall how the changes reflected in  
 3 the earlier document evolved into what ultimately  
 4 became -- strike that.

5 Do you recall any discussions with the bank  
 6 that reflected a transaction -- the transaction in  
 7 Schwartz 6, in other words, a \$5 million note fully  
 8 guaranteed by Mr. Ortenzio to expire on February 28,  
 9 2000?

10 A I don't recall that part of the discussion,  
 11 but I do know that John never agreed to guarantee the  
 12 whole 5 million or the 4 million that we already had  
 13 in place that was already in place.

14 Q Do you recall the bank requesting  
 15 Mr. Ortenzio to guarantee the full 5 million?

16 A I don't.

17 Q Do you recall that Mr. Ortenzio had  
 18 initially requested a \$1 million loan in contrast to  
 19 a 1.2 million?

20 A No. I just don't recall. I'm looking at  
 21 the difference in the two, but I don't recall this.

22 Q Do you recall Mr. Ortenzio, on behalf of  
 23 CCI, requesting that the 1 million or \$1.2 million  
 24 note initially expired on February 28, 2000, in  
 25 contrast to what ultimately turned out to be March

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1 MR. SWICHAR: Yes. Thank you.

2 THE WITNESS: No, I don't recall that.

3 BY MR. SWICHAR:

4 Q Do you recall any discussions with the bank  
 5 stating that it expected the \$4 million line of  
 6 credit to be repaid before the 1.2 million?

7 A No.

8 Q Do you recall any discussions with the bank  
 9 that it expected the \$4 million line of credit to  
 10 reach a zero balance before the \$1.2 million line of  
 11 credit could be repaid?

12 A No.

13 Q Now, we agree that the \$1.2 million loan  
 14 was a short-term note?

15 A Yes.

16 Q And we agree that Mr. Ortenzio as you  
 17 stated earlier told you specifically that he wanted  
 18 the \$1.2 million to be a short-term note?

19 A Yes, I do.

20 Q And at the time it was repaid by CCI on  
 21 February 11, 2000, there was no indication that there  
 22 was any pending request to the bank to extend the  
 23 \$1.2 million note, was there?

24 A It didn't expire until March. I'm not sure  
 25 I understand your question.

80

81

1 Q As far as you know, was there any request  
 2 on the bank to extend the \$1.2 million note?

3 A To the bank to request that we extend the  
 4 note?

5 Q Yes.

6 A No.

7 Q And was there any indication as of February  
 8 11, 2000 -- there was no indication from the bank  
 9 that it had intended to extend the \$1.2 million  
 10 note --

11 A No.

12 Q -- am I correct?

13 A That's correct.

14 Q It was your understanding as of February  
 15 11, 2000, that the \$1.2 million note would have  
 16 expired in any event on March -- as of -- no later  
 17 than March 31 of 2000; is that correct?

18 A That's correct.

19 Q And that's in contrast to the \$4 million  
 20 note which you would have anticipated would have been  
 21 renewed at the end of April of 2000; is that correct?

22 A That was always our hope, and it was each  
 23 time.

24 Q It was a course of dealing; is that  
 25 correct?

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1 other jobs?  
 2 A I do recall that, yes.

3 Q And he said that he expected the bonding  
 4 companies to cooperate in that fashion?

5 A I don't know that he expected it from them,  
 6 but he was going to talk to them about that.

7 Q And as of the time you had the meeting with  
 8 Mr. Ortenzio prior to the February 18 meeting with  
 9 the bank, wasn't it indicated to you through  
 10 Mr. Ortenzio that it was his primary intention to  
 11 keep his company operating by getting funds from the  
 12 bonding companies until such time as the money from  
 13 the jobs came in?

14 A We had doubts about whether he wanted to  
 15 keep the company operating.

16 Q What was his primary goal, to get money?

17 MR. GEBHARDT: Objection. His primary goal  
 18 for what?

19 BY MR. SWICHAR:

20 Q To keep the company alive?

21 A What's the question?

22 Q Was his primary goal to keep the company  
 23 alive?

24 MR. GEBHARDT: Objection.

25 MS. JOYCE: If you know what his primary

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1 A Yes.

2 Q Now, you testified about your discussions  
 3 that you had with Mr. Ortenzio prior to the bank  
 4 meeting on February 18, 2000.

5 Am I correct in stating that Mr. Ortenzio  
 6 advised you that he did intend to go to the bonding  
 7 companies for financial help until moneys came in  
 8 from the Scott Air Force Base and other jobs?

9 A Yes, that's correct.

10 Q And there was a discussion about -- do you  
 11 recall -- if I recall correctly, you testified that  
 12 -- strike that.

13 Did Mr. Ortenzio ever state to you that  
 14 bankruptcy was an alternative prior to the meeting  
 15 with the bank or did he not or you had no  
 16 recollection?

17 A We discussed bankruptcy prior to that.

18 Q And was it Mr. Ortenzio's primary goal  
 19 first to go to the bonding companies and ask for  
 20 financial help until the Scott Air Force Base money  
 21 came in?

22 A That's what I recall.

23 Q Did Mr. Ortenzio tell you that the bonding  
 24 companies would have to come up with the money until  
 25 the moneys came in from the Scott Air Force Base and

82

1 goal was.

2 BY MR. SWICHAR:

3 Q Based on your discussions with him?

4 A At that time, we had serious concerns as to  
 5 whether he did want to keep the company alive.

6 Q Do you recall on a certain date the bank  
 7 freezing the bank accounts of CCI?

8 A Yes, I do.

9 Q Do you recall when that occurred?

10 A Without looking back, I think it happened  
 11 -- actually, we found out on a Wednesday; but I think  
 12 it was actually frozen on a Tuesday night.

13 If I recall, based on the dates we've been  
 14 given here, I was thinking that it would be the  
 15 Wednesday after the 18th meeting.

16 Q A few days after the February 18th meeting?

17 A Yes.

18 Q Was there any warning by the bank that it  
 19 was going to freeze the accounts?

20 A Not to me.

21 Q What was the nature of the checks -- I'm  
 22 sorry. As a result of the bank freezing CCI's  
 23 checking account, were checks returned?

24 A Yes.

25 Q What was the nature of those checks?

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1       A It was our accounts payable to material  
 2 suppliers, vendors, subcontractors, payroll, all the  
 3 checks in the normal course of business that we had  
 4 written on the account.

5       Q Approximately what was the amount of the  
 6 payroll checks that were dishonored?

7       A I honestly can't recall. It was all the  
 8 checks from the last payroll at that time.

9       Q Can you give any approximation of the  
 10 dollars that that would be?

11      A My -- I don't recall the actual payroll  
 12 numbers.

13      Q Do you recall the number -- I'm sorry. Do  
 14 you recall the number of employees who didn't receive  
 15 their paychecks as a result of the bank freezing the  
 16 account?

17      A The number, no; but it was significant. I  
 18 just don't recall the number. We had -- the reason  
 19 I'm not recalling is because we had started laying  
 20 people off so the numbers were changing as people  
 21 were being laid off, the payroll numbers were getting  
 22 lower in that time period. I don't remember how many  
 23 we had left, but it was a significant number.

24      Q Well, significant number -- let me try to  
 25 bring you down. Over a hundred?

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1       A I would say probably over a hundred.

2       Q I don't mean to play games. Bigger than a  
 3 breadbasket? Between 150 and 200?

4       A I can't recall.

5       Q Is a hundred your best guess?

6       MS. JOYCE: Best estimate, because if it's  
 7 a guess, I'm not going to allow her to guess.

8 BY MR. SWICHAR:

9       Q Is that your best estimate? If you can't,  
 10 you can't. I just want a general idea. Over a  
 11 hundred?

12      A I would say over a hundred.

13      Q Now, the \$1.2 million note was repaid from  
 14 the \$4 million line of credit on February 11, 2000.  
 15 We agree on that.

16      At any time, did the bank ever come to you  
 17 as CFO and ask CCI to sign a document that would have  
 18 precluded payment from the \$4 million line of credit?

19      A Not that I recall.

20      Q As CFO, did the bank ever demand any  
 21 agreement from CCI that would make the \$4 million  
 22 line of credit a prohibited source of funds to repay  
 23 the \$1.2 million note?

24      MR. GEBHARDT: Objection.

25 BY MR. SWICHAR:

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1       Q You can answer.

2       A No.

3       Q Now, when the bank lent the 1.2 million,  
 4 changing thoughts now, there was a point in time when  
 5 the bank lent CCI the \$1.2 million in funds. That  
 6 money was deposited in CCI's checking account; is that  
 7 correct?

8       A That's correct.

9       Q And that was the same checking account that  
 10 was tied into the cash management facility; is that  
 11 correct?

12      A That's correct.

13      Q And that had the impact of increasing the  
 14 availability on the \$4 million line of credit by \$1.2  
 15 million; is that correct?

16      A That's correct.

17      Q And similarly it had had the impact of  
 18 decreasing the loan balance on the \$4 million line of  
 19 credit; is that correct?

20      A That's correct.

21      Q Now, let's move ahead in time. When the  
 22 \$1.2 million loan was repaid by drawing on the \$4  
 23 million line, a check was drawn on the checking  
 24 account; is that correct?

25      A When the 1.2 --

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1       Q Was repaid -- we're now moving ahead to  
 2 February 11th. The \$1.2 million loan was repaid by a  
 3 CCI check; is that correct --

4       A That's correct.

5       Q -- from the same checking account that we  
 6 just spoke of; is that correct?

7       A That's correct.

8       Q And that had the impact of increasing the  
 9 balance on the \$4 million line of credit; is that  
 10 correct?

11      A That's correct.

12      Q And since you're a CFO, I'll ask you this  
 13 question: The repayment of the \$1.2 million note had  
 14 the effect of reversing what occurred months earlier  
 15 when the 1.2 million was first lent to CCI with  
 16 respect to the \$4 million line of credit?

17      A That's correct.

18      Q Now, did the bank, in any fashion, monitor  
 19 CCI's use of the \$4 million known proceeds? Would  
 20 they ask you daily or weekly, what are you doing with  
 21 our money?

22      A We were required to give them reports.  
 23 It's in the documents here, if I looked at them; but  
 24 we had to give them an income statement, balance  
 25 sheet, accounts receivable, aging work in progress.

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1 Q Would those reports actually show the  
 2 payees, for example, of the proceeds of the \$4  
 3 million line of credit, where the moneys went  
 4 specifically?

5 A No. Specific to where it went, no.

6 Q Did the bank ever audit those requests,  
 7 those reports?

8 A That I gave them on a monthly basis?

9 Q Yes.

10 A I don't know what they did with them. I  
 11 just gave them to them.

12 Q Did they ever ask you for a list of payees  
 13 as to where the loan proceeds went?

14 A Prior to them freezing the account?

15 Q Yes.

16 A No, they did not.

17 Q By the way, when they froze the account, is  
 18 that when they first requested a list of payees?

19 A I don't recall if they did that or not. I  
 20 know they did before, but I don't recall if they  
 21 requested it.

22 Q Did the bank ever ask you to provide a list  
 23 of payees who would have received any of the proceeds  
 24 of the \$1.2 million note?

25 A No, they didn't.

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1 question needed clarification.

2 MR. SWICHAR: Well, in my mind, it did.

3 MS. JOYCE: That's fine.

4 MR. GEBHARDT: It's the witness's answer  
 5 though.

6 BY MR. SWICHAR:

7 Q My question is: Did you have any  
 8 discussions with Mr. Schwartz regarding the repayment  
 9 of the \$1.2 million note prior to the bank freezing  
 10 CCI's account?

11 A I don't recall if we did or not.

12 Q Do you recall Mr. Schwartz ever asking you  
 13 what the source of the repayment funds were with  
 14 respect to the \$1.2 million note?

15 A I don't recall. I remember the bonding  
 16 company asking that question, but I don't recall if  
 17 Craig Schwartz did.

18 Q Well, as of February 11th or prior thereto,  
 19 was Mr. Schwartz aware of the bank's -- of CCI --  
 20 strike that.

21 Was Mr. Schwartz aware of CCI's increasing  
 22 financial distress?

23 MR. GEBHARDT: Objection.

24 THE WITNESS: Increasing since we met in  
 25 November or -- I'm not sure what time frame.

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1 Q Do you recall a couple of days after  
 2 February 11, 2000, Mr. Schwartz came to CCI with the  
 3 \$1.2 million note and surety and returned it as  
 4 satisfied to CCI?

5 A I don't recall that.

6 Q Do you recall speaking to Mr. Schwartz at  
 7 any time after the \$1.2 million note was repaid?

8 A Yes, I do.

9 Q And were those discussions with respect to  
 10 the repayment of the 1.2 million?

11 A No. What I recall was regarding the  
 12 collateral --

13 Q Let me interrupt.

14 MS. JOYCE: Let her finish.

15 BY MR. SWICHAR:

16 Q Before the freezing of accounts, did you  
 17 have discussions with Mr. Schwartz before the  
 18 accounts were frozen?

19 MS. JOYCE: Do you want her to finish her  
 20 answer for the last question because you interrupted  
 21 her?

22 MR. SWICHAR: Yes. And I did that  
 23 intentionally because I wanted to clarify the  
 24 question.

25 MS. JOYCE: Okay. I wasn't aware the

1 BY MR. SWICHAR:

2 Q Yes. Well, as of November, was  
 3 Mr. Schwartz aware that CCI was incurring financial  
 4 problems?

5 A As of November, they realized we had cash  
 6 flow difficulties.

7 Q Between November and February 11th, did you  
 8 have any other discussions with Mr. Schwartz  
 9 regarding CCI's financial difficulties?

10 A Not that I recall. It would have been  
 11 right around that time where I would have been giving  
 12 him the information from the end of the year.

13 Q Would that have been before or after  
 14 February 11th, 2000?

15 A I don't recall that we gave the information  
 16 prior to -- if John gave it to them.

17 Q And you don't recall Mr. Schwartz asking  
 18 you, as CFO, how did CCI come up with this \$1.2  
 19 million?

20 A No, I didn't.

21 Q Did you suspect that Mr. Schwartz at any  
 22 time knew the source of repayment?

23 MR. GEBHARDT: Objection.

24 MS. JOYCE: Object, and do not answer.

25 BY MR. SWICHAR:

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1 Q Do you have any reason to believe -- strike  
 2 that.

3 Did you have any reason to believe back in  
 4 the year 2000 that Mr. Schwartz knew the source of  
 5 the repayment of the \$1.2 million note?

6 MR. GEBHARDT: Objection.

7 MS. JOYCE: Same objection. You're asking  
 8 for beliefs. If she has concrete knowledge, she's  
 9 here to tell you that. Whether or not she believed  
 10 or didn't believe is not relevant.

11 MR. SWICHAR: I don't think it's for you to  
 12 decide what's relevant. I think that's for the  
 13 court. But be that as it may, I'm entitled to her  
 14 belief. That's a very fair question.

15 MR. GEBHARDT: She's not -- she doesn't  
 16 know what is in that man's head.

17 MS. JOYCE: Exactly.

18 MR. SWICHAR: Well, that's my next  
 19 question. Don't anticipate the next question. I'm  
 20 not asking her if she was able to read Mr. Schwartz's  
 21 mind. I'll ask it a different way.

22 BY MR. SWICHAR:

23 Q Are you aware of any facts that led you to  
 24 believe that Mr. Schwartz was aware of the source of  
 25 the repayment of the \$1.2 million note?

1 I understand you're going to rephrase the  
 2 question, and I don't have to instruct her not to  
 3 answer that one at this point. Go ahead and  
 4 rephrase, please.

5 BY MR. SWICHAR:

6 Q As of the time you were at CCI after  
 7 February 11, 2000, until the date that you left, were  
 8 you aware of any facts which led you to believe that  
 9 Mr. Schwartz was aware of the source of the repayment  
 10 of the \$1.2 million note?

11 A Yes.

12 Q Of what facts are you aware?

13 A Any time after February 11th. I don't know  
 14 exactly when he found that out; but at some point  
 15 after that, I know that he was aware of it.

16 MR. GEBHARDT: The whole bank found out at  
 17 that, for God's sake.

18 BY MR. SWICHAR:

19 Q How did you become aware that Mr. Schwartz  
 20 was aware of the source of repayment?

21 A I had one meeting -- I'm trying to remember  
 22 exactly when it was, but I had one meeting with Craig  
 23 and someone else from Allfirst that had come into my  
 24 office.

25 They were asking questions about the

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1 A At what point in time?

2 MR. GEBHARDT: She knows today, for  
 3 instance.

4 BY MR. SWICHAR:

5 Q In February of 2000 and thereafter.

6 MS. JOYCE: Well, I think you have to limit  
 7 it between February of 2000. I don't mean to be  
 8 obstruct, Mr. Swichar; but --

9 MR. SWICHAR: Well, you are.

10 MS. JOYCE: Well, no, I'm not, because your  
 11 question is not fair to this witness. She left that  
 12 company in May of 2000, and her testimony gave you  
 13 that factual piece of information.

14 MR. SWICHAR: I'll rephrase the question.

15 MS. JOYCE: I would like to finish my  
 16 objection so we have a clear record for the court.

17 MR. SWICHAR: Go ahead, but don't accuse me  
 18 of misleading the witness. I'll clarify it; but if  
 19 you want to give a speech, go ahead.

20 MS. JOYCE: The witness's testimony was  
 21 that she left the company in May of 2000. Your  
 22 question to her was unfair in the sense that it was  
 23 open-ended and asked from any time from February of  
 24 2000 to the present what Mr. Schwartz did or did not  
 25 know. That's the basis for my objection.

1 collateral, and I had given them some information  
 2 regarding the collateral. At that time, they were  
 3 aware of it; but I don't recall the date of that  
 4 meeting. It was definitely after February 18th; but  
 5 I -- as I recall, it was sometime in the next week.  
 6 I don't recall of an exact time he showed up in his  
 7 office.

8 Q Thanks. Let's focus on the Scott Air Force  
 9 claim which was, how much, 4 million?

10 A Over 4 million.

11 Q What was your understanding of that claim?

12 A My understanding of it was that there was a  
 13 meeting that was held during the time the Persian  
 14 Gulf War was occurring where there were people -- I  
 15 was not in attendance, but there were people from CCI  
 16 at a meeting. There was a general there.

17 We were told that Scott Air Force Base was  
 18 going to be the premier Air Force Base to be used for  
 19 the hub for the war. They needed to accelerate the  
 20 project. If we did not accelerate the project, they  
 21 would have to default us on our contract.

22 If we did go forward on it, we would have  
 23 to eat the cost and put it in as a change order or  
 24 claim at the end when we finished the job. We were  
 25 worried at that time of the effect of having it on

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1 our record, that we had a project here that if we did  
 2 not complete it, it would hinder us in getting future  
 3 projects.

4 We had made the decision to go forward, and  
 5 that decision cost us a lot of money that we did not  
 6 get paid.

7 Q Did you believe the \$4 million claim to be  
 8 a valid claim with respect to Scott Air Force Base?

9 A Yes, I did.

10 Q And did you believe -- strike that.

11 You're familiar to a certain extent with  
 12 the Albemarle Prison claim of \$2 and a half million?

13 A I'm familiar there was a claim, yes.

14 Q Did you believe that to be a valid claim of  
 15 CCI?

16 A Yes. From everything our chief operating  
 17 officer told me, I would say yes.

18 Q And is it fair to say that as of February  
 19 18th, 2000, you believed to the extent you could from  
 20 information you had obtained that such claims were  
 21 valid, the Scott Air Force Base and the Albemarle  
 22 Prison claim?

23 A Yes.

24 Q Now, if you turn to Exhibit 10, which is a  
 25 cash flow projection, next to the last line on the

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1 A Yes, that's correct.

2 Q And am I correct that if we then go into  
 3 March, we see that the line of credit was reduced by  
 4 the 1.2 million, i.e., to 4 million; is that correct?

5 A That's correct.

6 MR. SWICHAR: If I could have a minute with  
 7 my client, that may be my last question. If I may  
 8 just ask one more question.

9 BY MR. SWICHAR:

10 Q I want to get back to the situation where  
 11 the bank froze CCI's account. Were there situations  
 12 where the bank had clear checks of CCI but then  
 13 reversed those clearings?

14 A Yes, there were.

15 Q Tell me what that is about.

16 A We had -- in my computer system, I had a  
 17 tie-in to Allfirst that would show the activity in  
 18 our accounts. I could see what was going through  
 19 there on a daily basis.

20 I had seen the checks that had cleared, and  
 21 we started seeing -- I could see it on our reports  
 22 that it was taken out of our account as a clear  
 23 check, and then I started seeing it going back as  
 24 though it didn't clear.

25 I started seeing those reports. I said,

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1 left, available line of credit. Let me just --  
 2 strike that.

3 When was Exhibit 10 shown to the bank, if  
 4 at all?

5 MS. JOYCE: By her?

6 MR. GEBHARDT: Objection.

7 BY MR. SWICHAR:

8 Q Do you know if Exhibit 10 was ever given to  
 9 the bank?

10 A I don't recall actually handing it to them,  
 11 no.

12 Q Do you recall when this document was  
 13 prepared?

14 A Yes, I do.

15 Q When was that?

16 A Printed as of February 16th. It was  
 17 probably prepared prior to that.

18 Q Now --

19 A And again, I prepared these on a regular  
 20 basis.

21 Q Now, going down to the available line of  
 22 credit, do you see that on the left, line of credit?

23 A Yes.

24 Q Am I correct that it reflects that the line  
 25 of credit as of February was \$5.2 million, correct?

1 they're going back in time. If I recall correctly --  
 2 as I said, I think Wednesday is when I had found out  
 3 the accounts were frozen. I think they went back as  
 4 far as Monday and unclearing checks that had shown as  
 5 clear on our account.

6 Q Do you recall those payees?

7 MS. JOYCE: Of which the checks were  
 8 reversed you mean?

9 MR. SWICHAR: Yeah.

10 THE WITNESS: Again, it was any check that  
 11 we had written. It was employees. It was vendors.  
 12 It was subcontractors. It was utility payments.

13 Q Do you recall if one check was to the IRS?

14 A I recall several checks that had to do with  
 15 payroll-type issues. I don't if it was IRS. I think  
 16 there was unemployment. I don't remember exactly  
 17 what it was, but there were payroll-type of issues.

18 It could have been the IRS. In fact, as  
 19 I'm speaking about it, Wednesday usually was the day  
 20 that we did that through a funds transfer. So that  
 21 probably was one.

22 Q An IRS check?

23 A Yes.

24 Q How about Cleveland Brothers? Was that  
 25 another check that was honored and then reversed?

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1 A Yes, I do believe that's true.  
 2 Q Who was Cleveland Brothers?  
 3 A Cleveland Brothers was a large equipment  
 4 supplier for us. We bought a lot of the equipment,  
 5 and they did repairs on the equipment.  
 6 Q Do you recall the amount of the IRS check  
 7 that was honored and then reversed?  
 8 A I don't think it was a check. I don't  
 9 recall the amount. I don't recall if it was a check.  
 10 I think at that point in time that it was  
 11 automatically taken.  
 12 MR. SWICHAR: Larry, you're champing at the  
 13 bit.  
 14 MR. GEBHARDT: I just wanted to get done.  
 15  
 16 REDIRECT EXAMINATION  
 17  
 18 BY MR. GEBHARDT:  
 19 Q If you look at Exhibit 6, which is the  
 20 commitment letter for the \$1.2 million loan, on the  
 21 first page, the next to the last paragraph, you'll  
 22 see a statement saying that the \$1.2 million loan is  
 23 due and payable on March 31 of 2000. Do you see  
 24 that?  
 25 A I do.

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1 available to it to pay its month-to-month expenses,  
 2 right?  
 3 A That's correct.  
 4 Q And the line of credit would be used to  
 5 fill in the gap until the actual customers made their  
 6 payments to CCI?  
 7 A That's right.  
 8 Q And while we were talking about finance work  
 9 in progress, what that means is the normal monthly  
 10 expenses of CCI in doing its construction work?  
 11 A That's correct.  
 12 Q Now, as a chief financial officer, would it  
 13 be consistent with your understanding of a line of  
 14 credit that's used to finance accounts receivable and  
 15 work in progress to use the line to make the normal  
 16 monthly interest payments on borrowings?  
 17 A Yes, it would.  
 18 Q Would it also be consistent with that  
 19 purpose to make the normal monthly principal  
 20 amortizations on loans that required monthly  
 21 principal payments?  
 22 A Yes, it would.  
 23 Q But it would be inconsistent to completely  
 24 prepay all principal and interest on a loan that was  
 25 not yet due?

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1 Q And if you look at Exhibit 10, the cash  
 2 flow statement, my question is: Is the reason the  
 3 available line of credit is reduced from February's  
 4 \$5.2 million to March's \$4 million, the March 31, 2000  
 5 due date of the \$1.2 million loan?  
 6 A Yes, it is.  
 7 Q Now, turn, if you would, to Exhibit 1,  
 8 which is the commitment letter for the \$4 million  
 9 line of credit.  
 10 MR. SWICHAR: I'm sorry. What exhibit?  
 11 MR. GEBHARDT: Exhibit 1.  
 12 MR. SWICHAR: Okay.  
 13 BY MR. GEBHARDT:  
 14 Q Now, going down to the line, Use of  
 15 Proceeds, you see it says finance work in progress  
 16 and accounts receivable. I think you've indicated  
 17 you understood that to be the purpose of the \$4  
 18 million line of credit; is that right?  
 19 A That's correct.  
 20 Q Now, accounts receivable would mean the  
 21 accounts that CCI had billed its customers but which  
 22 its customers had not as yet paid buy were due and  
 23 owed to CCI?  
 24 A That's correct.  
 25 Q So CCI would not have had that money

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1 A I agree with that. That's correct.  
 2 Q Now, if you look at the second page,  
 3 numbered paragraph 8, there's a statement there that  
 4 advance --  
 5 MR. SWICHAR: What exhibit?  
 6 MR. GEBHARDT: Exhibit 1.  
 7 BY MR. GEBHARDT:  
 8 Q Exhibit 1, numbered paragraph 8 on page 2,  
 9 it says, Advances not to exceed 85 percent of  
 10 qualified accounts receivable less than 90 days past  
 11 due excluding retainages. Do you see that?  
 12 A Yes. It says 80 percent.  
 13 Q Paragraph 8, Advances not to exceed 80  
 14 percent of qualified accounts receivable less than 90  
 15 days past due, comma, excluding retainages, right?  
 16 A That's right.  
 17 Q Now, what that means is that's a limit on  
 18 the amount of money that CCI could borrow under the  
 19 line of credit; is that right?  
 20 A That's correct.  
 21 Q So even though it was a \$4 million line of  
 22 credit, if CCI only had \$2 million of accounts  
 23 receivable that were less than 90 days past due, CCI  
 24 could not borrow \$4 million?  
 25 A That's correct.

1 Q And would I be correct that in November --  
 2 excuse me.  
 3 A If I could just add to that. If we would  
 4 have gone above that, we would have been in default  
 5 of our loan.  
 6 Q Now, when this commitment -- excuse me. In  
 7 November when the \$1.2 million loan was taken out and  
 8 so on, the Scott Air Force Base receivable was not a  
 9 qualified account receivable, was it?  
 10 A No, it wasn't.  
 11 Q Because it was past 90 days due?  
 12 A That's right.  
 13 Q And that would be the same for the  
 14 receivables due from the Albemarle job?  
 15 A That's right.  
 16 Q So you couldn't use either Scott Air Force  
 17 Base or Albemarle in determining the amount of  
 18 borrowing CCI was able to do under the line of  
 19 credit?  
 20 A That's right.  
 21 Q And I think you had indicated that on a  
 22 monthly -- did you indicate on a monthly basis you  
 23 would provide the bank with accounts receivable  
 24 agings?  
 25 A Yes, I did.

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1 Q And would it be correct to say that when  
 2 CCI wrote a check drawing on its line of credit in --  
 3 MR. SWICHAR: Well, I'm going to object to  
 4 these leading questions. Why don't you ask her in  
 5 not a leading way?  
 6 BY MR. GEBHARDT:  
 7 Q When a check -- when the check was written  
 8 on February 11, 2000 as a draw on the \$4 million line  
 9 of credit to repay the \$1.2 million loan, was there  
 10 sufficient borrowing availability under paragraph 8  
 11 on page 2 for that borrowing to be made?  
 12 A I can't answer that without looking at  
 13 numbers from statements back then.  
 14 Q Was it your belief back then that that  
 15 formula -- that the payment could be made and still  
 16 be consistent with the borrowing base formula?  
 17 MR. SWICHAR: Objection. She already said  
 18 she can't state that.  
 19 BY MR. GEBHARDT:  
 20 Q But you would agree --  
 21 MR. SWICHAR: Objection to form.  
 22 MR. GEBHARDT: I haven't said the question  
 23 yet.  
 24 MR. SWICHAR: But when you start out with  
 25 that -- come on.

1 BY MR. GEBHARDT:  
 2 Q You would agree that if the eligible  
 3 accounts receivable were not of a sufficient  
 4 magnitude to authorize a borrowing of the \$1.2  
 5 million on February 11, that borrowing would not be  
 6 an authorized borrowing under the terms of the  
 7 commitment?  
 8 MS. JOYCE: Object to the form. Go ahead.  
 9 BY MR. GEBHARDT:  
 10 Q If there wasn't sufficient borrowing  
 11 availability, then the \$1.2 million check that was  
 12 written would be in default, wouldn't it?  
 13 A That's correct. It doesn't mean it  
 14 wouldn't clear. It just means we would be into  
 15 default of our loan.  
 16 Q Now, if the \$4 million line of credit had  
 17 been increased by \$1 million to \$5 million back in  
 18 November of 1999 with the \$1 million increase  
 19 guaranteed by Mr. Ortenzio, the line of credit could  
 20 not have been used to repay the amount of the  
 21 increase, could it?  
 22 MR. SWICHAR: I object to the question.  
 23 Can I hear it back, please? I object to the form.  
 24 MR. GEBHARDT: Wait a minute. If you've  
 25 objected, the witness understands the question, then

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 1 she can answer. You don't need to hear it again  
 2 unless you need to hear it.  
 3 THE WITNESS: I need to hear it.  
 4 MR. SWICHAR: If I don't understand it --  
 5 MR. GEBHARDT: That's all right. As long  
 6 as the witness understands it, you don't -- it's not  
 7 necessary that you do.  
 8 MR. SWICHAR: That's why I wanted to hear  
 9 it read back so I can see if I understood it.  
 10 MR. GEBHARDT: Okay. Read it back.  
 11 (The reporter read back the referred-to  
 12 portion of the record.)  
 13 MS. JOYCE: Do you understand the question?  
 14 THE WITNESS: I do understand it. We would  
 15 be writing a check and putting it back in the same  
 16 account.  
 17 MR. SWICHAR: I can't hear you.  
 18 THE WITNESS: I said, no, you couldn't.  
 19 You would be writing a check on the same account. It  
 20 would still have the same balance.  
 21 BY MR. GEBHARDT:  
 22 Q Now, as a final question, you were asked  
 23 some questions about the fact that the \$1.2 million  
 24 was advanced into the CCI account and used to pay  
 25 down the \$4 million line of credit balance. Do you

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1 recollect those questions?  
 2 A Questions about --  
 3 Q Yes.  
 4 A Yes.  
 5 Q And the two -- the loan, the \$4 million  
 6 line of credit and the loan both bear the same  
 7 interest rate?  
 8 A That's correct.  
 9 Q So there was no practical effect of  
 10 disbursing the \$1.2 million and paying down the \$4  
 11 million or simply holding the \$1.2 million back until  
 12 it was drawn, was there?  
 13 A That's correct.  
 14 Q Based on your understanding as the person  
 15 who negotiated the \$4 million line of credit and  
 16 executed the loan documents, was the draw on the line  
 17 of credit by way of a check of \$1.2 million to repay  
 18 the \$1.2 million guaranteed separate loan a borrowing  
 19 made, quote, to finance work in progress and accounts  
 20 receivable, period, end quote?  
 21 A No, it wasn't.  
 22 Q So therefore, in your view, it was not an  
 23 authorized borrowing under the line of credit?  
 24 MR. SWICHAR: Objection to form.  
 25 BY MR. GEBHARDT:

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1 Q In your view, was the borrowing authorized  
 2 under the terms of the line of credit?  
 3 MR. SWICHAR: Objection to form. Objection  
 4 to the word authorized. I don't think it's within  
 5 her promise to interpret the documents.  
 6 MS. JOYCE: I think you're asking her for  
 7 an expert witness answer.  
 8 BY MR. GEBHARDT:  
 9 Q Let me just say, based on your  
 10 understanding as the person who negotiated and  
 11 executed the \$4 million loan and loan documents, was  
 12 the draw of \$1.2 million to pay the personally  
 13 guaranteed loan and authorized borrow?  
 14 MR. SWICHAR: Objection to form. Same  
 15 reason.  
 16 BY MR. GEBHARDT:  
 17 Q Permitted under the terms of the loan?  
 18 MR. SWICHAR: Objection to form. You're  
 19 asking her to interpret legal documents.  
 20 MR. GEBHARDT: All right.  
 21 BY MR. GEBHARDT:  
 22 Q You may answer.  
 23 A No, I don't.  
 24 MR. GEBHARDT: All right. That's it.  
 25 MR. SWICHAR: No, it's not it. I have a

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1 few questions more.  
 2 MR. GEBHARDT: It never ends.  
 3  
 4 RECROSS EXAMINATION  
 5  
 6 BY MR. SWICHAR:  
 7 Q Ms. Phillips, Exhibit 10, you stated the  
 8 reduction in the line of credit from 5.2 to 4 was  
 9 based on the assumed repayment of a \$1.2 million  
 10 note; is that correct?  
 11 A Yes.  
 12 MS. JOYCE: Object to the form.  
 13 BY MR. SWICHAR:  
 14 Q And the answer is yes?  
 15 A Yes.  
 16 Q And what was assumed occurred on February  
 17 11th, 2000; is that correct?  
 18 A Say that again.  
 19 Q In other words -- let me ask it a different  
 20 way. When you prepared Exhibit 10, you had assumed  
 21 that the \$1.2 million note would be repaid by the  
 22 following month; is that correct?  
 23 A That's correct.  
 24 Q You had assumed that by March, the \$1.2  
 25 million note would be repaid?

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1 A I assumed that it wouldn't be available  
 2 anymore.  
 3 Q That the short-term note would have  
 4 expired; is that correct?  
 5 A That's correct.  
 6 Q Now; Exhibit 1, the loan commitment letter.  
 7 With respect to the 4 million and specifically the  
 8 paragraph dealing with use of proceeds to finance  
 9 work in progress, etc., do you have any reason to  
 10 believe that until the money -- until the \$1.2  
 11 million note was repaid, the funds were used for any  
 12 purpose other than as stated in Exhibit 1?  
 13 A Not that I recall. I thought they were all  
 14 for that purpose.  
 15 Q Based on your understanding of the loan  
 16 documents as CFO, was there any provision in Exhibit  
 17 1 that prohibits -- strike that.  
 18 That deals specifically with repayment  
 19 terms and the source of funds that could be used to  
 20 pay the \$1.2 million note?  
 21 MS. JOYCE: Let me make an objection on the  
 22 record because the document speaks for itself.  
 23 That's the same objection that Mr. Burke made on  
 24 Mr. Ortenzio's behalf at his deposition with respect  
 25 to the contents of the exhibit. So the document

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1	speaks for itself. You can answer, and you did; so	1	The available credit changed.
2	that's fine.	2	Q Now, you stated that the repayment of the
3	BY MR. SWICHAR:	3	\$1.2 million note did not have any practical effect
4	Q If you go to the \$1.2 million note loan	4	as to CCI because the interest rates were the same;
5	commitment, which is Exhibit 6, up until the time of	5	is that fair?
6	the repayment of the \$1.2 million note, do you have	6	MS. JOYCE: Object to the form of the
7	any knowledge of the proceeds being used for other	7	question. That's not what the witness said. You're
8	than finance work in progress in accounts receivable?	8	mischaracterizing her testimony.
9	A Not that I recall.	9	BY MR. SWICHAR:
10	Q And is it prohibited -- does Exhibit 6 deal	10	Q Did I mischaracterize your testimony?
11	specifically in any fashion with respect to the	11	A Yes. That is one thing I said that is not
12	source of funds that could be used or that could not	12	the reason, but I did say that is one of the things
13	be used to repay the \$1.2 million note?	13	in my thought process.
14	MS. JOYCE: Same objection. You may	14	Q Am I correct in stating that the effect of
15	answer.	15	the repayment of the \$1.2 million note was to repay a
16	THE WITNESS: Not that I see.	16	short-term note that was due to expire the following
17	BY MR. SWICHAR:	17	month?
18	Q Now, if you go back to Exhibit 1, that had	18	A Yes, that's correct.
19	the eligibility formula with respect to the	19	Q As far as you know, the \$1.2 million note
20	borrowings on the \$4 million note; is that correct?	20	would become due the following month; is that right?
21	A Are you referring to --	21	A That's correct.
22	Q To the 80 percent, yes.	22	Q And we all agree it was a short-term note?
23	A Yes.	23	A That's correct.
24	Q Now, if you turn to Exhibit 6, the last	24	MR. SWICHAR: Larry?
25	paragraph on page 1 has the same eligibility formula;	25	MR. GEBHARDT: No further questions.
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1	is that correct?	1	MR. SWICHAR: One second. Off the record.
2	A That's correct.	2	(Off the record discussion.).
3	Q So the \$1.2 million note and the \$4 million	3	MR. SWICHAR: One more question.
4	note had the same eligibility formula; is that right?	4	BY MR. SWICHAR:
5	A That's correct.	5	Q You testified that the \$4 million loan line
6	Q Now, am I correct that the repayment of the	6	of credit had been used to pay the principal interest
7	\$1.2 million note from the 4 million did not increase	7	that was being paid on the \$2 million equipment loan;
8	CCI's borrowings? In other words, it merely	8	is that correct?
9	transferred the \$1.2 million note under that note to	9	A I wasn't positive about the principal, how
10	the \$4 million borrowing; is that correct?	10	that was handled, but yes.
11	MS. JOYCE: Object to the form of the	11	Q You had no issue with repaying the
12	question. You can answer.	12	principal on the equipment note from the \$4 million
13	THE WITNESS: That's correct.	13	line of credit; is that correct?
14	BY MR. SWICHAR:	14	MR. GEBHARDT: Objection.
15	Q So the borrowing didn't change at all when	15	MS. JOYCE: Objection. Go ahead. You're
16	the \$1.2 million loan was paid from the \$4 million	16	counsel for the case. Go ahead.
17	line of credit; is that correct?	17	MR. GEBHARDT: Her testimony was and the
18	A No, because now the 1.2 was paid off and	18	questions I asked were to the monthly installments of
19	now we only had 4 million.	19	principal, not the entire unpaid principal balance
20	Q The amount remained the same?	20	which is what you've asked.
21	MR. GEBHARDT: Objection.	21	MR. SWICHAR: That's fair.
22	BY MR. SWICHAR:	22	BY MR. SWICHAR:
23	Q The amount due to the bank didn't change,	23	Q I want to ask you then, You had no problem
24	did it?	24	or didn't see any problem with respect to paying
25	A The balance due to the bank did not change.	25	principal monthly on the \$2 million equipment note

1 from the \$4 million line of credit; is that correct?  
 2 MR. GEBHARDT: Objection. You still  
 3 stated --  
 4 MR. SWICHAR: I'm asking her a different  
 5 question. I'm entitled to do that. I'll rephrase  
 6 it.  
 7 BY MR. SWICHAR:  
 8 Q Did you have any problem or any  
 9 inconsistency with the loan documents in repaying the  
 10 principal monthly on the equipment note from the \$4  
 11 million line of credit?  
 12 MR. GEBHARDT: Objection. You're still  
 13 creating a deceptive ambiguity in the use of the word  
 14 principal because principal can include prepayments  
 15 as well as regularly scheduled installments. The  
 16 questions were about the regularly scheduled  
 17 installments, not prepayments. She's testified about  
 18 prepayments and unscheduled.  
 19 MR. SWICHAR: I'll rephrase it. Thank you.  
 20 BY MR. SWICHAR:  
 21 Q Did you see any problem or inconsistency  
 22 with the loan documents in repaying the equipment  
 23 note -- from repaying principal in regular monthly  
 24 installments for the equipment note from the \$4  
 25 million line of credit?

117 1 Q And you were reducing monthly the principal  
 2 that was owed on the \$2 million equipment note; is  
 3 that correct?  
 4 A That's correct.  
 5 Q And you didn't see any problem or see any  
 6 inconsistency with the loan documents in using the \$4  
 7 million line of credit to pay monthly -- to pay down  
 8 monthly the principal owed on the \$2 million  
 9 equipment note?  
 10 A I actually had talked to Craig Schwartz  
 11 about that. He said that -- we had a discussion  
 12 about that at one point because we had a payment that  
 13 went in late because of something that happened in  
 14 accounts payable.  
 15 Craig had called and said the payment  
 16 wasn't paid. After I found out about it, I said  
 17 okay. We talked about that; and I said, well, it's  
 18 actually drawing of the line to pay this down. But  
 19 no, I did not see problems with and knew that is what  
 20 was happening.  
 21 Q And in your discussions with Craig Schwartz  
 22 did he indicate that he had a problem in the way that  
 23 the equipment note was being repaid -- the equipment  
 24 note payments were being made?  
 25 A Monthly payments, no.

118 1 MS. JOYCE: It's the same question. I'll  
 2 object. The objection hasn't been cured. I can't  
 3 let her answer it because it mischaracterizes what  
 4 she said before.  
 5 THE WITNESS: It's not a repayment.  
 6 MS. JOYCE: Right. You said that before.  
 7 MR. SWICHAR: Pardon me?  
 8 MS. JOYCE: She said it was not a  
 9 repayment, which is what she had testified to  
 10 previously.  
 11 BY MR. SWICHAR:  
 12 Q There were monthly payments of principal  
 13 paid on the equipment note; is that correct?  
 14 A That's correct.  
 15 Q Those repayments that were made monthly  
 16 were paid from the \$4 million line of credit; is that  
 17 correct?  
 18 MS. JOYCE: Objection to your use of the  
 19 word repayments since the witness said these were not  
 20 repayments.  
 21 MR. SWICHAR: All right.  
 22 BY MR. SWICHAR:  
 23 Q If those payments of principal were derived  
 24 from the \$4 million line of credit; is that correct?  
 25 A That's correct.

120 1 MR. SWICHAR: That's it. It took a while,  
 2 but I got there.  
 3 MS. JOYCE: Okay. Let me place a statement  
 4 on the record for the protection of the witness and  
 5 the Commonwealth of Pennsylvania, which is her  
 6 employer.  
 7 There's an indication that this case may  
 8 potentially be going to trial during the month of  
 9 July of 2002. On July 1st of 2002, the Commonwealth  
 10 of Pennsylvania will unroll its Imagine PA statewide  
 11 computer system of which this witness is an integral  
 12 part of unrolling that product for this state.  
 13 There is currently in place by the  
 14 Commonwealth of Pennsylvania a no-leave policy for  
 15 its employees who are significantly involved in that  
 16 project for the Commonwealth.  
 17 I'm giving you, both of you as attorneys in  
 18 this case, adequate notice of that; so if the case  
 19 does proceed during the month of July, alternative  
 20 arrangements for Phillips' testimony may need to be  
 21 undertaken because of that issue.  
 22 If you feel, in your estimate, that the  
 23 case needs to be moved to a different time frame  
 24 because of this witness's unavailability, I'm giving  
 25 you adequate notice to do that since there were

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1 obviously prior problems scheduling this witness's  
 2 deposition.

3 MR. GEBHARDT: What's the time frame on  
 4 your unavailability? You said July 1. Is it the  
 5 entire month of July?

6 MS. JOYCE: Yes. It's my understanding  
 7 that it is the entire month of July; is that correct?

8 THE WITNESS: It could go longer, but July  
 9 is the critical time frame.

10 MR. GEBHARDT: But June is all right?

11 THE WITNESS: June is all right.

12 MS. JOYCE: In terms of that issue, yes.

13 Obviously, you would have to work around --

14 MR. GEBHARDT: I understand. We had it in  
 15 June, and it may have been flipped back to June. I'm  
 16 not positive. Is there likely a problem in August,  
 17 if they move it to the August date?

18 MS. JOYCE: If the Commonwealth extends its  
 19 no-leave policy, it could be a problem. We don't  
 20 know that at this point in time. All we know is for  
 21 the month of July, the no-leave policy is in effect  
 22 for those employees who are significantly involved in  
 23 the project.

24 MR. GEBHARDT: The best thing would be to  
 25 put it in June.

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1 COUNTY OF DAUPHIN : SS  
 2 COMMONWEALTH OF PENNSYLVANIA :

3 I, Hillary M. Hazlett, a Reporter  
 4 Notary-Public, authorized to administer oaths within  
 5 and for the Commonwealth of Pennsylvania and take  
 6 depositions in the trial of causes, do hereby certify  
 7 that the foregoing is the testimony of  
 8 SHERI PHILLIPS.

9 I further certify that before the taking of  
 10 said deposition, the witness was duly sworn; that the  
 11 questions and answers were taken down  
 12 stenographically by the said reporter, Hillary M.  
 13 Hazlett, a Reporter Notary-Public, approved and  
 14 agreed to, and afterwards reduced to typewriting  
 15 under the direction of the said Reporter.

16 I further certify that the proceedings and  
 17 evidence contained fully and accurately in the notes  
 18 by me on the within deposition, and that this copy is  
 19 a correct transcript of the same.

20 In testimony whereof, I have hereunto  
 21 subscribed my hand this 18th day of March, 2002.

22 NOTARIAL SEAL  
 HILLARY M. HAZLETT, Notary Public  
 Johnstown, Cambria County, PA  
 My Commission Expires Sept. 29, 2003

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1 MS. JOYCE: For this issue, yes.

2 MR. SWICHAR: Well, I'm not consenting to  
 3 June.

4 MR. GEBHARDT: No, I understand you're not.  
 5 It's for the judge.

6 MR. SWICHAR: The record will reflect we  
 7 already requested that it be moved off of June. You  
 8 may not be aware of that. It had originally been  
 9 scheduled by June.

10 MR. GEBHARDT: I understand. It was taken  
 11 off.

12 MR. GEBHARDT: An Order just came back  
 13 putting it back in June. The judge can move it back  
 14 to June the same as she moved it to July.

15 MS. JOYCE: Just so you have adequate  
 16 notice of that issue for your purposes.

17 MR. SWICHAR: We're finished.

18 (The deposition concluded at 1:57 p.m.)

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